

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE LOPEZ TORRES, ALVIN GAITAN  
BENITEZ, CHRISTIAN LEMUS CERNA,  
OMAR DEJESUS CASTILLO, DOUGLAS  
DURAN CERRITOS, MANUEL ERNESTO  
PAIZ GUEVARA, and JESUS ALEJANDRO  
CHAVEZ,

Defendants.

Crim. No. 1:14cr306

March 31, 2016

JURY TRIAL

BEFORE: THE HONORABLE GERALD BRUCE LEE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE  
BY: JULIA MARTINEZ, AUSA  
STEPHEN M. CAMPBELL, AUSA  
TOBIAS TOBLER, AUSA

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OFFICIAL COURT REPORTER:

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U.S. District Court  
401 Courthouse Square, 5th Floor  
Alexandria, VA 22314  
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1 APPEARANCES (Continued)

2 FOR DEFENDANT JOSE LOPEZ TORRES

3 BYNUM & JENKINS, PLLC  
4 BY: ROBERT L. JENKINS, JR., ESQ.  
5 THE LEIVA LAW FIRM, PLC  
6 BY: MANUEL E. LEIVA, ESQ.

7 FOR DEFENDANT ALVIN GAITAN BENITEZ

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9 BY: AMY LEIGH AUSTIN, ESQ.  
10 SMITH & ZIMMERMAN, PLLC  
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15 FRANK SALVATO, ESQ.

16 FOR DEFENDANT OMAR DEJESUS CASTILLO

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21 FOR DEFENDANT DOUGLAS DURAN CERRITOS

22 LAW OFFICE OF J.R. CONTE, PLLC  
23 BY: JOSEPH R. CONTE, ESQ.  
24 LAW OFFICE OF DWIGHT CRAWLEY  
25 BY: DWIGHT E. CRAWLEY, ESQ.

FOR DEFENDANT MANUEL ERNESTO PAIZ GUEVARA

LAW OFFICE OF W. MICHAEL CHICK, JR.  
BY: WILLIAM MICHAEL CHICK, JR., ESQ.

FOR DEFENDANT JESUS ALEJANDRO CHAVEZ

JEROME P. AQUINO, ESQ.  
ELITA C. AMATO, ESQ.

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PROCEEDINGS

(Thereupon, the following was heard in open court at 10:15 a.m.)

(Jury not present.)

THE CLERK: 1:14 Criminal 306, United States versus Jose Lopez Torres, Alvin Gaitan Benitez, Christian Lemus Cerna, Omar Dejesus Castillo, Douglas Duran Cerritos, Manuel Ernesto Paiz Guevara, and Jesus Alejandro Chavez.

THE COURT: Everybody okay now?

THE INTERPRETER: Yes.

THE COURT: Good morning, ladies and gentlemen.

Good morning, Mr. Jose Lopez Torres, Mr. Alvin Gaitan Benitez, Mr. Douglas Duran Cerritos, Mr. Christian Lemus Cerna, Mr. Omar Dejesus Castillo, Mr. Manuel Ernesto Paiz Guevara, and Mr. Jesus Alejandro Chavez, and counsel.

PRELIMINARY MATTERS

THE COURT: There's a note received from the jury and I want to know if you all had any comment about what I should say or not say about it at all.

MS. MARTINEZ: Your Honor, the government's position would be that there's no need to respond to it

1 unless Your Honor feels necessary to tell the juror that  
2 you're not going to respond to it.

3 There will certainly be ample testimony in  
4 this case about Pedro Romero Cruz, whose gang name is  
5 Payaso. He may have been mentioned -- he certainly was  
6 mentioned as Payaso in the opening. I can't recall if  
7 his full name was mentioned.

8 But there will be witnesses who will discuss  
9 him, so, I imagine that question will be answered at  
10 some point during trial. I don't see any reason to  
11 answer it now.

12 MR. JENKINS: May it please the Court.  
13 Robert Jenkins on behalf of Mr. Torres, Your Honor. On  
14 behalf of Mr. Torres, we concur with the government's  
15 suggestion.

16 THE COURT: All right.

17 MR. SALVATO: I think we all agree, Your  
18 Honor. Frank Salvato for Mr. Cerna.

19 THE COURT: All right.

20 I want to let you all know one thing I'm  
21 doing that's a little bit different, and that is, during  
22 jury selection, I think there were one or two jurors,  
23 and now it looks like there's seven or eight, who want  
24 to be able to use their laptop or tablet to keep --  
25 check with their office in terms of e-mails and things

1 like that, which I want to allow in the jury room before  
2 court starts, at lunchtime, and during the trial, but  
3 they will not be able to take notes on them. They're  
4 not going to bring any cellphones in.

5 And I think it will police itself, just like  
6 there are two phones in the jury room now, that have  
7 been back there for years. You can't really do  
8 something privately back there because there's so many  
9 people and the table is so small. So that's my plan.

10 You can bring our jury out.

11 (Jury present at 10:19 a.m.)

12 THE COURT: You may be seated.

13 Good morning, ladies and gentlemen.

14 THE JURORS: Good morning, Your Honor.

15 THE COURT: Good morning, Mr. Jose Lopez  
16 Torres.

17 Good morning, Mr. Alvin Gaitan Benitez.

18 Good morning, Mr. Douglas Duran Cerritos.

19 Good morning, Mr. Christian Lemus Cerna.

20 Good morning, Mr. Omar Dejesus Castillo.

21 Good morning, Mr. Manuel Ernesto Paiz

22 Guevara.

23 And good morning, Mr. Jesus Alejandro

24 Chavez.

25 Ladies and gentlemen, as we begin the trial,

1 first, I received a note from one juror about a name  
2 that was referred to during argument.

3 Be patient. The whole case will be  
4 presented to you and everything you need to see and hear  
5 will be presented to you during the trial. So there's  
6 no need to focus on any particular questions just yet.

7 Remember I said at the beginning of this  
8 that the lawyers will bring out anything they think is  
9 important. Any names, any activities, they'll bring it  
10 out for you.

11 I am going to be doing something that's a  
12 bit unprecedented I wanted to bring to your attention,  
13 and the reason I've had you sign a court order is, I  
14 remember during jury selection that there were several  
15 individuals who are self-employed and who also are in  
16 jobs where they have to follow through with individuals  
17 during the day.

18 And, I mentioned to you that I would allow  
19 you to bring in laptops and tablets. We don't have  
20 wi-fi in the courthouse. You're going to have to bring  
21 in your own hot spot. And maybe you all can share a hot  
22 spot. That's what it has to be.

23 But it can't be a cellphone. And that is  
24 because our court has a no cellphone policy.

25 Now, of course, there are people who bring

1 cellphones in the area of the courthouse, and then there  
2 are a couple stores that will actually store a cellphone  
3 if that's what you need to do. But you can't bring them  
4 in the building because our court has a no cellphone  
5 policy.

6 The only exception to that would be the  
7 lawyers who are in trial, with a court ordered approval.

8 So I'm trying to strike a balance by  
9 allowing you to have access to a laptop and a tablet in  
10 the jury room.

11 But bear in mind there are already two  
12 phones back there. So if somebody needs to make a phone  
13 call, the phone is back there so you can make brief  
14 phone calls to family, children, and work as time  
15 permits.

16 But don't, obviously, become so consumed  
17 with that that you're losing track of why you're here.  
18 You're here for jury duty, which is a very important  
19 responsibility.

20 So I wanted to say that out loud. And I  
21 have a court order that you all signed. And all the  
22 people who have signed the order, I believe, understand  
23 the importance of adhering to it.

24 And rule number one, as always, is, even if  
25 you're using your laptop or a tablet, you're not to do



1 any research on the case. You're not to discuss the  
2 case.

3 And, I'm expecting other jurors to let me  
4 know if there would be any violation of that. If that  
5 were to happen, then we would stop it altogether.

6 Because what I'm trying to do here is strike  
7 a balance, so you can continue to keep in touch with  
8 your office, if you think you need to, Monday through  
9 Thursday, and also pay attention to the trial.

10 Does everybody understand what I'm trying to  
11 do?

12 (Jurors indicating.)

13 THE COURT: Okay. Well, I hope you work  
14 with me. What I'm doing is something different, but I'm  
15 trying to accommodate you and also trying to make sure I  
16 have a fair, representative jury who can sit six weeks  
17 and not be distracted by needing to call their office or  
18 follow up with an e-mail.

19 Thank you very much.

20 Ready to bring the witness back?

21 MS. MARTINEZ: Yes, Your Honor.

22 THE COURT: Thank you.

23 I believe the next examiner will be counsel  
24 for Mr. Alvin Gaitan Benitez.

25 MR. JENKINS: Yes, Your Honor.

1 THE COURT: Is that right.

2 No?

3 MR. JENKINS: Yes, Your Honor.

4 Your Honor, for the record, at the  
5 beginning -- at the conclusion of his direct I reserved  
6 on the issue of his qualifications as an expert.

7 THE COURT: Yes.

8 MR. JENKINS: But now that I've had ample  
9 opportunity to cross-examine him on behalf of  
10 Mr. Torres, we will withdraw any objection, and we  
11 believe that the witness is qualified as a gang expert.

12 THE COURT: All right.

13 MR. SALVATO: And we concur with that, Your  
14 Honor.

15 THE COURT: All right.

16 THEREUPON, CLAUDIO SAA, previously duly  
17 sworn, testified further as follows:

18 CROSS-EXAMINATION

19 BY MR. ZIMMERMAN:

20 Q. Good morning, Sergeant.

21 A. Good morning, sir.

22 Q. My name is Jeff Zimmerman and I represent  
23 Mr. Gaitan Benitez.

24 What was the name -- you had  
25 testified yesterday -- what was the name of the meeting

1 of just the leadership of regional cliques?

2 A. Universal *misa*.

3 Q. A universal *misa*. Is that also sometimes called  
4 a general meeting?

5 A. Yes.

6 Q. And that's just the leadership?

7 A. Yes.

8 Q. And those are the only people in attendance at  
9 such a meeting?

10 A. There may be situations where they may make an  
11 exception for somebody.

12 Q. But generally.

13 A. Generally, it's the leadership.

14 Q. Okay. And, it's only the leadership of MS-13  
15 that decides that a death sentence, a green light, can  
16 be imposed on an MS-13 member, correct?

17 A. They approve it, yes.

18 Q. And they must approve it?

19 A. Well, there have been cases where a --

20 Q. For --

21 A. Generally, yes.

22 Q. And, this is done at such leadership meetings,  
23 correct?

24 A. For the most part.

25 MR. ZIMMERMAN: I have no further questions,

1 Your Honor.

2 MR. CONTE: Your Honor, just two questions.

3 THE COURT: Counsel for Mr. Cerritos.

4 CROSS-EXAMINATION

5 BY MR. CONTE:

6 Q. Good morning.

7 A. Good morning, sir.

8 Q. Sir, how many members did you say that are in  
9 MS-13?

10 THE REPORTER: I'm sorry?

11 BY MR. CONTE:

12 Q. How many members are there in MS-13, in the area?

13 A. Where, exactly?

14 Q. In Northern -- or the Washington, DC,  
15 Metropolitan area?

16 A. It fluctuates anywhere from 2,000 to 3,000, more  
17 or less.

18 Q. And, is their membership declining?

19 A. I can't say that for certain.

20 Q. Well, do you recall testifying in 2006 that there  
21 were approximately 3,500, to 5,000 --

22 A. If that's what --

23 Q. -- members?

24 A. -- I testified to, yes.

25 Q. Pardon me?

1           A.    If that's what I testified to, yes.

2           Q.    All right. So, that would mean that the  
3 membership is declining, right?

4           A.    Yes. But like I also said, it fluctuates.

5                   MR. CONTE: All right.

6                   Nothing further, Your Honor.

7                   THE COURT: Counsel for Mr. Lemus Cerna?  
8                   (Pause.)

9                   THE COURT: I'm only calling your names.  
10 You're not required to speak if you don't want to. I'm  
11 just following the order you gave me.

12                   State your name, please.

13                   CROSS-EXAMINATION

14 BY MR. SALVATO:

15           Q.    Good morning, Sergeant Saa. This is Frank  
16 Salvato and I represent Christian Lemus Cerna.

17           A.    Good morning.

18           Q.    I'm going to ask you a few questions about  
19 tattoos. You remember you talked to Mr. Campbell about  
20 that during --

21           A.    Yes, sir.

22           Q.    -- your testimony?

23                   And is it fair to say that there are certain ways  
24 in which MS-13 members recognize each other?

25           A.    Yes.

1 Q. And, one of those ways is to get tattoos,  
2 correct?

3 A. Correct. That's one way.

4 Q. And at one point, tattoos were considered  
5 mandatory.

6 A. At one point, yes.

7 Q. And that seems to be changing; but at one point,  
8 they were mandatory; is that correct?

9 A. Correct. When they first started that was a  
10 mandatory situation.

11 Q. Okay. And, basically, part of getting a tattoo  
12 is the result of having work done or getting work done,  
13 correct?

14 A. Well, it depends on what specific tattoo and each  
15 specific clique, like I said. The tattooing situation  
16 has changed over the years. Previously, when they first  
17 began, once the member became part -- once that *paro*  
18 associate became a full-fledged member, he was given a  
19 tattoo.

20 Q. And you can also get a tattoo for getting work  
21 done, correct?

22 A. Yes.

23 Q. In other words, for committing an act of violence  
24 you can get a tattoo; is that --

25 A. Yes.

1 Q. -- correct?

2 And, MS-13 often uses different types of tattoos,  
3 correct?

4 A. Yes.

5 Q. Dots, correct?

6 A. Well, dots are not an MS-13-specific tattoo.

7 Q. Area Codes?

8 A. That's not a specific to MS-13.

9 Q. I thought you said in your direct testimony that  
10 503 -- what was the Area Code you mentioned?

11 A. I don't remember saying 503.

12 Q. Do, often, MS-13 members have 503 or an Area  
13 Code?

14 A. Some, yes, for the southern Area Code.

15 Q. And, it's the leader that decides whether a  
16 member, an associate, gets a tattoo, correct?

17 A. Not necessarily, no.

18 MR. SALVATO: Court's indulgence.

19 (Pause.)

20 BY MR. SALVATO:

21 Q. Mr. Saa, it's fair to say that a leader would  
22 decide whether or not a particular member of the gang  
23 had earned a tattoo; is that true?

24 A. If he earns it, yes.

25 Q. A leader makes that decision?

1 A. For the most part, yes.

2 Q. And, do you have any specific knowledge about my  
3 client in this case, Christian Lemus Cerna, having any  
4 tattoos?

5 A. No.

6 Q. Does he have any tattoos?

7 A. I don't know your client.

8 Q. You don't know one way or another?

9 A. No.

10 Q. Can you identify my client at all?

11 A. No, I don't know who your client is.

12 Q. Sergeant Saa, I think you said during your  
13 examination with Mr. Jenkins that there are ranges of  
14 punishment --

15 A. Yes.

16 Q. -- for a violation, correct?

17 A. Yes.

18 Q. And cooperating with the police is a significant  
19 punishment that results in a green light --

20 A. Correct.

21 Q. -- correct?

22 Or trying to leave the gang, that's a  
23 significant rule violation that can result in a green  
24 light, correct?

25 A. If leaving the gang wasn't approved.



1 Q. But, generally, green lights are provided for  
2 these major violations such as cooperating with the  
3 police?

4 A. Yes.

5 Q. And, the type of violation of a rule that would  
6 warrant a *calentón*, or a beating, would be not paying  
7 your dues, letting a homeboy down during a  
8 confrontation, or not following some of the rules, true?

9 A. Correct.

10 Q. And, fair to say, as you just indicated, I think,  
11 to Mr. Zimmerman, that the leader decides whether a  
12 green light should be authorized, true?

13 A. For the most part, yes.

14 Q. And, that's done at a general meeting, true?

15 A. For the most part, yes.

16 Q. And, I believe you said during your direct  
17 testimony that once somebody is in MS-13 as a homeboy,  
18 they're in for life?

19 A. Correct.

20 Q. So, once a homeboy, always a homeboy?

21 A. That is correct.

22 Q. Mr. Saa, would it be fair to say that not in your  
23 16 and a half years of law enforcement experience, that  
24 not every criminal act done by an MS-13 member is in  
25 furtherance or in support of the gang?

1           A. That's correct. Because there could be something  
2 that the individual member did on his own.

3           Q. Sure. So, there are such things as personal  
4 criminal acts, true?

5           A. Yes.

6           Q. For example, in the Town of Herndon or elsewhere,  
7 where you pulled over an MS-13 member who didn't have a  
8 license, was driving drunk, that's not a criminal act?

9           A. Well, it is a criminal act.

10          Q. In furtherance of MS-13?

11          A. That's correct.

12          Q. That is a personal situation, true?

13          A. Yes.

14          Q. And you've investigated cases in your experience  
15 over these 16 and a half years where, even an assault or  
16 a violent act was a personal beef, not an act in  
17 furtherance of MS-13, true?

18          A. An example being a domestic, domestic assault.

19          Q. Or in a bar, where -- you've investigated cases  
20 where in a bar, an MS-13 member's girlfriend was  
21 approached by somebody else, and the guy punched him in  
22 the face, true?

23          A. Yes.

24          Q. And that's a personal beef, a personal action,  
25 not in furtherance of the gang, true?

1           A.    I could say that.

2           Q.    And I know you covered in some detail with  
3 Mr. Jenkins about braggadocio, bragging, that's part of  
4 the culture?

5           A.    Correct.

6           Q.    And have you seen cases where different MS-13  
7 members or associates bragged about doing something that  
8 only one person had actually done; in other words,  
9 multiple people taking credit for something that  
10 somebody else did?

11          A.    I can't speak on the totality of how many people  
12 are doing that, but have I personally seen that? Yes.

13          Q.    So you've seen cases where three guys are taking  
14 credit for something that one guy actually did, in  
15 reality?

16          A.    Or they may have had minimal participation and  
17 boast themselves up.

18          Q.    A situation where they were just there, but they  
19 said they did something that was more active than just  
20 being there, true?

21          A.    No. Because I've had cases that they were there  
22 and participated, but in a minimal fashion, but boasted  
23 about doing more.

24          Q.    All right. And you've had cases where they  
25 weren't even there, and one person bragged, or three

1 other people, and all of a sudden it's like who attended  
2 Super Bowl I; all of a sudden 300,000 people attended  
3 that event. Fair to say?

4 A. You say who wasn't there? That I wasn't there?

5 Q. Let's say an MS-13 member wasn't even there, but  
6 he heard about it through somebody that was there.

7 A. Right.

8 Q. And he starts bragging about it. You've had  
9 those types of situations.

10 A. Well, I can't say, because, if -- I wasn't there,  
11 and if he's telling me, then I'm investigating the case,  
12 that shows that he was involved, I go based on that.

13 Q. But, through your investigation it later turned  
14 out that only one person perpetrated that crime versus  
15 the ten people that are bragging about it; you've had  
16 that, haven't you?

17 A. I can't really say I have.

18 Q. Have you ever had a situation where -- so you've  
19 never had a situation where multiple people take credit  
20 for a criminal act that was only perpetrated by one  
21 other person?

22 MR. CAMPBELL: Objection, Your Honor. Asked  
23 and answered.

24 THE COURT: Overruled.

25 THE WITNESS: Sir?

1 BY MR. SALVATO:

2 Q. Have you ever had a --

3 THE COURT: Answer the question.

4 THE WITNESS: Ask again, please.

5 BY MR. SALVATO:

6 Q. Sure. Have you ever had a situation where  
7 multiple people are bragging about an act that only one  
8 single person actually did?

9 A. I mean, I've had cases where it was a mob assault  
10 and I said they -- I say they bragged to me about it,  
11 but they actually minimized it to some degree, but they  
12 were an active participant.

13 Q. But sometimes they maximize their involvement in  
14 order to pump themselves up, true?

15 A. Maybe to their fellow gang members, but for the  
16 most part they minimize to me.

17 Q. To fellow gang members, though, they're bragging  
18 and --

19 A. Yes.

20 Q. -- putting themselves in a higher role in the  
21 situation than they actually did?

22 A. Yeah.

23 And, of course, where if I have ten defendants  
24 and each one is giving me a different story, but they're  
25 all putting themselves there. One would say one did

1 more, and one would say one did less.

2 Q. Okay. But the fellow gang members, often they  
3 brag about things that they even didn't do, true?

4 A. Well, when you say did or didn't, yes, in the  
5 totality of the situation, yes.

6 Q. And Mr. Jenkins, I think, asked you about the  
7 impact of cooperation on MS-13 members. Do you remember  
8 that line of questioning by Mr. Jenkins?

9 A. Yes.

10 Q. And, fair to say, if you cooperate with the  
11 police or with the government, that has a significant  
12 impact on your potential safety, correct?

13 A. Yes.

14 Q. All right. And, that safety concern, if you  
15 cooperate with the government and you're ultimately  
16 deported to El Salvador, that safety concern is still  
17 present, correct?

18 A. That concern in there.

19 Q. In fact, I think you used the words "confirmed  
20 and verified" that you cooperated with the police, then  
21 there's a greater risk of safety issues if you get  
22 deported back to El Salvador.

23 A. Yeah. When they confirm and verify that they did  
24 participate or cooperate, that is a chance that that can  
25 happen.

1 Q. Right. And in fact, the greater chance, I think  
2 you responded to Mr. Jenkins, a greater chance in El  
3 Salvador than here.

4 A. Yes.

5 MR. SALVATO: That's all the questions I  
6 have.

7 Thank you, Your Honor.

8 THE COURT: All right. You may inquire.

9 CROSS-EXAMINATION

10 BY MS. RALLS:

11 Q. Good morning, Sergeant Saa. My name is Meredith  
12 Ralls.

13 A. Good morning.

14 Q. Mr. Salvato asked you about his client. In fact,  
15 you haven't investigated any of these guys in this case,  
16 right?

17 A. Not any of them.

18 Q. You earlier described the cliques as NFL teams.  
19 But they don't necessarily compete against each other  
20 the same way that NFL teams do.

21 A. No, I just used as an example, as far as the  
22 structure.

23 Q. So, they might hang out together sometimes?

24 A. Clique members? Other clique members?

25 Q. Right.

1 A. Yes.

2 Q. And, there might be someone with the same  
3 nickname as another person when they hang out together?

4 A. Yes.

5 Q. You earlier said that gang members pay dues,  
6 right?

7 A. Yes.

8 Q. Now, if somebody wasn't paying dues, that would  
9 be some evidence that he maybe wasn't part of the gang,  
10 right?

11 A. He may be also -- well, if he's -- if he's a  
12 member who is supposed to be paying dues, he's part of  
13 the gang.

14 Q. But, if he's not paying dues, if there's somebody  
15 not paying dues to the gang, that would be some evidence  
16 that he's not part of the gang, right?

17 A. No. That's some evidence that he's not paying  
18 dues and that he has to step up and pay the dues.

19 Q. So, gang members pay dues, then?

20 A. Yes.

21 Q. And, people who are not in the gang don't pay  
22 dues?

23 A. Yeah. Non-gang members --

24 Q. Okay.

25 A. No.



1 MS. RALLS: Thank you.

2 (Pause.)

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION

5 BY MR. CHICK:

6 Q. Good morning, Detective Saa. My name is Mike  
7 Chick, and I'm the attorney for Manuel Ernesto Paiz  
8 Guevara.

9 A. Good morning.

10 Q. How are you holding up? All right?

11 A. Good to go.

12 Q. Okay. So, you talked a little bit, more  
13 yesterday, a little bit today, but about a *calentón*?

14 A. Yes.

15 Q. A *calentón* is a -- it's a discipline, right?

16 A. Punishment.

17 Q. Punishment, discipline?

18 A. Yes.

19 Q. Okay. And, you said it was at 13-second beating,  
20 right?

21 A. Yes.

22 Q. Okay. And, um, I think you also said that  
23 it's -- that a *calentón* is more severe than a typical  
24 13-second jump in; is that right?

25 A. Yes.

1 Q. Okay. Um, are there parameters to -- or rules in  
2 a *calentón* at all, in terms of -- I don't know, like  
3 where, where you can hit or where you cannot hit or  
4 anything like that?

5 Like, can you hit the head?

6 Can you hit the face?

7 Is there -- are there rules to it?

8 A. What the *calentón*, basically, it's punishment, so  
9 you take whatever beating is given to you. What you're  
10 referring to are far as not being kicked in the head,  
11 that's more so for the jump in.

12 Q. Okay. There's a slight difference between the  
13 two in terms of -- so, in a jump in, there might --  
14 there are rules in terms of where you can hit, where you  
15 cannot hit?

16 A. Yes. A jump in is the indoctrination to bring  
17 the member in, an associate into the gang. The *calentón*  
18 is a punishment, i.e., you're being punished --

19 Q. Okay.

20 A. -- so --

21 Q. And that's why you say it's a little bit  
22 severe --

23 A. Yes.

24 Q. -- because it's more sort of a --

25 A. Punishment.

1 Q. No rules in term of that kind of a thing?

2 A. Yes.

3 Q. Okay. Have you ever -- I don't think you've ever  
4 actually been in a gang, right?

5 I mean, I'm not trying to be sarcastic or  
6 anything. I'm just -- it's a -- I'm -- genuinely  
7 curious.

8 A. I have not been in a gang, but I did undercover  
9 work as a gang member.

10 Q. Okay. So, I'm guessing that you've -- that  
11 you've seen a *calentón* with your own eyes?

12 A. Yes, I have.

13 Q. Okay. And you've seen a jump in with your own  
14 eyes, too?

15 A. Yes, I have.

16 Q. Did you participate in those?

17 A. No.

18 Q. Okay. And you said earlier that the purpose of a  
19 gang is to instill fear and intimidation in the  
20 community?

21 A. Instill fear and intimidation in the community,  
22 yes.

23 Q. Gang members threaten people?

24 A. All the time.

25 Q. Okay. Do they ever threaten each other?

1 A. Yes.

2 Q. Okay. What about a homeboy? Would a -- is it  
3 consistent with the culture of the gang and the practice  
4 of the gang for a homeboy to threaten a *chequeo* or a  
5 recruit?

6 A. Yes.

7 Q. Okay. Why would they threaten them?

8 A. Maybe he's not stepping up to what he was ordered  
9 to do or asked to do.

10 Q. Okay. You talked about the fact that there are a  
11 bunch of different types of cliques in MS-13, and you  
12 talked about the fact -- one of the cliques that you  
13 described is one of the cliques at issue here, which is  
14 the clique that is at -- at issue here, which is PVLS,  
15 right?

16 A. Yes.

17 Q. Okay. Are you -- what kind of familiarity do you  
18 have specifically with that clique?

19 A. PVLS, which stands for Park View Locos  
20 Salvatrucha, which originated in Los Angeles in the  
21 early '80s when the gang first started, named after Park  
22 View Street, in the Pico-Union area of Grand Park.

23 It was one of the originating cliques. And once  
24 the gang established themselves in the U.S. and through  
25 deportation, those members who were in that clique

1 brought that to El Salvador.

2 Q. Okay. So you're familiar with sort of the  
3 history of the clique?

4 A. Yes.

5 Q. I guess what I'm getting at is, what familiarity  
6 do you have in terms of what the clique is doing today  
7 and in the past, you know year, or so. Intimate -- what  
8 kind of intimate familiarity do you have with the  
9 clique?

10 A. This clique is in our region. Through the  
11 history they've established themselves as a -- as a  
12 clique of MS that's grown in the United States and in  
13 the Northern Virginia region.

14 Q. Okay.

15 A. It's one of the larger cliques in the region.

16 Q. Are you up to date in terms of knowledge of  
17 what's going on in the clique, who's been in charge,  
18 who's not been in charge, who the members are, all that  
19 kind of stuff?

20 A. Not as much as I should be.

21 Q. Okay.

22 You don't know who any of these people are in  
23 this courtroom?

24 A. I don't know any of the clients here.

25 Q. Okay.

1 A. The defendants, excuse me.

2 Q. Can you name anybody in the PVLS clique?

3 A. No.

4 Q. You can't, because you don't know?

5 A. I don't know.

6 Q. Okay. And you're based in Herndon, in Fairfax  
7 County, right?

8 A. Yes.

9 Q. Okay. And that's where that -- one of the areas  
10 where that clique is located, right?

11 A. In which area? Fairfax County?

12 Q. Correct.

13 A. Yes.

14 Q. Okay. I think you -- you mentioned that you  
15 also -- you -- not only do you go and you go to  
16 trainings for yourself to learn about the gang and the  
17 history and all that kind of stuff, but you also -- you  
18 also participate in training other people about the gang  
19 and about gang prevention and awareness and that sort of  
20 thing, right?

21 A. Yes.

22 Q. Okay. Um, I assume part of that training also  
23 includes educating people on -- on what kind of kids are  
24 at risk or vulnerable to being lured into a gang; is  
25 that right?

1       A. Yes. And in the training I do, and how in-depth  
2 I go into, which, who is my audience, because it could  
3 be law enforcement, it could be parent/teacher  
4 conferences.

5       Q. Okay. And, there's also quite -- there's quite a  
6 bit of academic studies and literature on the type of  
7 kids who are vulnerable and who the gang would prey on  
8 to try to pull in and indoctrinate, right?

9       A. There's a lot of studies, done, yes.

10      Q. Okay. Young teenage males?

11      A. Yes.

12      Q. Poor?

13      A. Poor to middle class.

14      Q. Okay. Teenagers who -- young teenage poor males  
15 who are immigrants are a higher risk, right?

16      A. That's their target audience, yes.

17      Q. Okay. And probably especially young immigrant  
18 poor teenage boys who are -- who only speak Spanish,  
19 right?

20               Or may be newer to the country, even?

21      A. I mean, I can't -- I don't want to paint a broad  
22 brush on that, but, yes, because there are exceptions.

23      Q. But that's what the literature says, they are the  
24 at-risk kids.

25      A. That's -- yes, they are the at-risk.

1 Q. Okay. Kids who live in high -- high crime or  
2 high gang activity neighborhoods are even higher risk,  
3 right?

4 A. That's the target audience, yes.

5 Q. Okay. You're familiar with the Culmore  
6 neighborhood?

7 A. Yes, I am.

8 Q. Okay. That's in Fairfax County, right?

9 A. Yes, it is.

10 Q. You would call that a high-risk neighborhood,  
11 wouldn't you?

12 A. I can't say. I mean, defining it in your terms,  
13 what you just said, you have to --

14 Q. It means --

15 A. Poor middle-class immigrants, that are in that  
16 area, yes.

17 Q. You can check all those boxes off when you look  
18 at the Culmore neighborhood, right?

19 A. Yeah, but I wouldn't -- I personally wouldn't  
20 define it as a high-risk area, because you're defining  
21 it by, like you said, the check-off list --

22 Q. Right.

23 A. -- the studies. Somebody growing up in that area  
24 would say different.

25 Q. Sure. Yeah. But setting aside our subjective



1 views of what's high risk and what's not high risk, the  
2 objective factors, the check marks that they use, would  
3 categorize Culmore as a high-risk neighborhood for  
4 somebody who would be vulnerable to gang recruitment,  
5 right?

6 A. I would define it as an area that is vulnerable  
7 to it.

8 Q. Okay.

9 Kids with single parents, right?

10 A. Correct.

11 Q. Kids who don't have a father figure?

12 A. Correct.

13 Q. Okay. Those are the kids that the gang preys on,  
14 correct?

15 A. They target that, yes.

16 Q. Okay. And I heard you used the word a couple of  
17 different times, the word "indoctrinate," right?

18 A. Yes.

19 Q. And you said -- I think in direct, you said that  
20 *chequeos*, recruits, they are those -- and I think this  
21 is a direct quote -- they are those in the process of  
22 being indoctrinated into the gang. Right?

23 A. Yeah, I used it when the -- the different stages  
24 of the membership. It starts with the *paro*. And once  
25 they reach that high status as *paro* or *paisa*, and if

1 they've proven themselves to some degree as to loyalty  
2 to the gang, then they go to the *chequeo* stage, which is  
3 the final stage before they become a member.

4 Q. Okay.

5 A. Or homeboy.

6 Q. And they pull these kids in, in a very alluring  
7 way, right?

8 They lure them in, right?

9 A. They lure them. They threaten them in. There's  
10 a variety of things they use to get these recruits.

11 Q. And they -- once they start to pull them in, they  
12 groom them, right?

13 A. Yeah, as part of the stage, the staging of  
14 getting them to be homeboys.

15 Q. And once they are sufficiently indoctrinated,  
16 then they become -- they call them soldiers, right?

17 A. When you say "sufficiently indoctrinated" --

18 Q. Once they have met the level of -- once they have  
19 satisfied the people in the gang that they are  
20 sufficiently indoctrinated what they need to be  
21 indoctrinated with, they become soldiers in the gang,  
22 right?

23 A. Once they do the *paisa* stage, *paro*, they're  
24 interchangeable. Or the *chequeo*, they are given the  
25 mission to commit a violent act or homicide. Then

1 they're considered a homeboy or a soldier.

2 Q. And the way you go from *chequeo*, from recruit, to  
3 homeboy or soldier is by acts of violence, right?

4 A. Acts of violence, homicides.

5 Q. Okay. You kill somebody, you're moving up?

6 A. Correct.

7 Q. Okay. And, let's say -- let's say a *chequeo*  
8 is -- is -- well, actually, let me ask the question this  
9 way: Let me ask you some things and you can tell me  
10 whether these things are consistent with the practice of  
11 MS-13. Okay?

12 A. Okay.

13 Q. Is it consistent with the practices of MS-13 to  
14 keep a *chequeo* in the dark about things that they're  
15 doing, about certain plans that they have, to not tell a  
16 *chequeo* certain things?

17 A. I think that would be a case-by-case situation.

18 Q. Okay. That's -- that happens?

19 A. Case-by-case situation.

20 Q. Okay. So, for example, if there's a plan to  
21 murder somebody, they wouldn't tell -- they wouldn't  
22 necessarily tell the *chequeo* about that plan, would  
23 they?

24 A. They probably wouldn't provide all the details to  
25 it.

1 Q. Okay.

2 A. But they would probably give him -- say the heads  
3 up on it, that he will be involved in this, but not  
4 provide all the details to it.

5 Q. Would they -- would they ever draw, lure a  
6 *chequeo* to a meeting when there is going to be a  
7 homicide, where there's a plan to be a homicide, but not  
8 tell the *chequeo* that somebody is going to be killed?

9 A. That could happen. But when the -- that recruit  
10 member at that stage already, he pretty much knows that  
11 that's going to be the next step.

12 Q. I'm confused. It could -- you're saying it can  
13 happen?

14 A. That -- the scenario you gave me?

15 Q. Yes.

16 A. Yeah, it's possible. But like I said, for the  
17 most part, when that individual *paro* is already in that  
18 *chequeo* stage, he knows the rules. He knows that when  
19 you're in that stage, you're going to be called upon to  
20 do an act of violence, i.e., a homicide.

21 Q. But it's consistent with the gang for somebody to  
22 actually be brought to a planned murder scene, but them  
23 not to be told that there is going to be a murder,  
24 right?

25 A. You say "consistent. I can't say it's

1 consistent. It's case by case.

2 Q. Okay. Is it inconsistent with the gang?

3 A. It's case by case.

4 Q. Okay. So it can happen?

5 A. Yes.

6 Q. I guess in my -- my definition of "consistent"  
7 is, if -- if it's case by case, then that -- that's  
8 consistent. I'll just put that out there. Okay? Just  
9 for future --

10 A. I'm going to leave it at case by case.

11 Q. Okay. All right.

12 Let's say -- let's say a *chequeo* --  
13 hypothetically, a *chequeo* is at a -- at a meeting where  
14 there's a planned murder, okay? And, people start --  
15 people start murdering the person who they are planning  
16 to murder, and then the *chequeo* is told -- after the  
17 person is stabbed and laying there, the *chequeo* is given  
18 a knife and told to stab the deceased, and -- and  
19 threatened to stab them or -- or, you know -- well, they  
20 are threatened. What if a *chequeo* doesn't follow that  
21 order?

22 What would happen?

23 MR. CAMPBELL: Objection, Your Honor. It  
24 calls for speculation.

25 MR. CHICK: He's an expert in the gang and

1 its practices and its culture.

2 THE COURT: Hypothetical questions are  
3 permitted. Objection overruled.

4 THE WITNESS: Hypothetically, harm would  
5 probably come to him if he doesn't follow through.

6 BY MR. CHICK:

7 Q. Okay. Possible death?

8 A. Hypothetically, yes.

9 Q. He just witnessed -- he would have just witnessed  
10 a murder, right?

11 A. In the hypothetical situation you gave, yes.

12 Q. Okay. Does the gang like to keep witnesses of  
13 murders around?

14 A. Well, they're all witnesses to the murder.

15 Q. Okay. You said that -- like, top rule, top rule  
16 in the gang is the Mara, which means gang, Mara comes  
17 number one, right?

18 A. Yes.

19 Q. Over mother, I think that's what you said?

20 A. Over mother, over God.

21 Q. Okay. Over mother --

22 A. Over God.

23 Q. -- over God.

24 So, if you're told -- if you're ordered -- in a  
25 situation like I just described, if you're ordered to do

1 something and you don't do it, um, the rest of the gang  
2 would consider that you're breaking rule number one,  
3 right?

4 A. Yes.

5 Q. Okay.

6 I guess right up there with that rule, almost --  
7 almost equally with that rule, is the rule that you  
8 don't talk to law enforcement, right?

9 A. Yeah. The thing about what -- with these members  
10 or these associates going around -- up on the stages to  
11 the soldier, they know all of this going in.

12 Q. Got you.

13 Let me go back to my hypothetical of that murder,  
14 murder scene.

15 A. Yes, sir.

16 Q. Okay?

17 Would it be consistent with the gang's practices,  
18 after that murder goes down, would it be consistent with  
19 the gang's practices for that *chequeo* to be jumped in to  
20 the gang at that point?

21 A. No. Because if he's a *chequeo*, he already had  
22 been -- going through the stage, he would have to -- the  
23 *chequeo* stage, he would have to commit that crime that  
24 he's being -- would it have happened right there in that  
25 instant?

1 Q. Uh-huh.

2 A. Could, could not.

3 Q. So, in other words, if the *chequeo* does what's  
4 expected of him -- if he does what's expected of him, he  
5 could be jumped in?

6 A. In that instant or in the future?

7 Q. Well, we'll go one by one. He could definitely  
8 be jumped in, in the future.

9 A. Yes.

10 Q. Okay. And, you're saying, case by case, he could  
11 be jumped in in that instant?

12 A. It wouldn't happen right then and there at that  
13 scene.

14 Q. It would not happen right then and there at that  
15 scene?

16 A. If the -- if this hypothetical homicide just  
17 happened --

18 Q. Yes.

19 A. -- they're not going to wait around to jump a  
20 member in when they just committed a murder.

21 Q. And as the gang expert, as the gang expert,  
22 you're saying that right after a murder scene, where a  
23 *chequeo* is present, the gang would never jump in that  
24 *chequeo* right after the murder at the scene?

25 A. No. As a gang expert I'm saying it's a case by



1 case.

2 Q. Okay. So it's case by case?

3 A. Yes.

4 Q. Okay.

5 You have participated in searches at gang  
6 members' homes?

7 A. Yes.

8 Q. You guys go to their -- you show up at their  
9 homes, their apartments or, you know, the mother's home  
10 or wherever it is, with a search warrant and you kind of  
11 surprise them, right?

12 I mean, you don't tell them you're coming with a  
13 search warrant?

14 A. No.

15 Q. Okay. So, nobody -- nobody knows you're coming.

16 What do you find when you search -- search their  
17 homes and their apartments and their bedrooms and that  
18 kind of stuff?

19 A. I mean, that's a very open-ended question. We  
20 could find anything. I mean, it hasn't -- specific to a  
21 case, what we're looking for, what we put on the search  
22 warrant we're looking for.

23 Q. Well, what kind of stuff do you put on the search  
24 warrant that you're looking for?

25 A. You're talking about hundreds of cases. I mean,

1 what specifically are you --

2 THE COURT: Mr. Chick, I gave you some  
3 leeway with hypotheticals. This is a case -- if you  
4 would focus on this case, it would help me now. Thank  
5 you.

6 MR. CHICK: Yes, sir.

7 BY MR. CHICK:

8 Q. When you search somebody's house, you're looking  
9 for gang-related things, right?

10 A. Depends upon the crime that I'm investigating.

11 Q. Okay. You have worked with the federal  
12 government in gang cases before?

13 A. Yes.

14 Q. And you assist them, you help them?

15 A. Yes.

16 Q. Okay. Um -- and you know that gang members  
17 who -- as an expert in this whole thing, you know that  
18 gang members who participate and who help the federal  
19 government, they get certain special treatment from the  
20 federal government, don't they?

21 A. They are recommended. As far as special  
22 treatment, I don't know what you're saying as far as  
23 special treatment.

24 Q. Okay. They're given visas to stay in the  
25 country?

1           A. That's all between the federal government and  
2 that -- I know they can put in for a request for it.  
3 But whether they give one, I can't say that.

4           Q. Have you ever heard of people getting visas from  
5 the federal government for helping the federal  
6 government?

7           A. For cooperating, yes.

8           Q. Okay. And they get protection, right?

9           A. Yes.

10          Q. They get to go to a -- they get to be put in the  
11 Witness Protection Program, right?

12          A. They have, yes.

13          Q. They also get to -- and when they go to prison,  
14 they actually get to go to a special prison that keeps  
15 them protected, too, right?

16          A. Like a secured special prison for them?

17          Q. Like a prison for government cooperators.

18          A. Yes.

19          Q. And in your experience, do defendants who go to  
20 trial, do they get any of those protections?

21               Do they get to go to the special prison?

22          A. Like the defendants, you're talking about?

23          Q. Right.

24          A. Not that I'm aware of, no.

25          Q. Okay. Do they get visas to stay in the country?

1 A. Not that I'm aware of, no.

2 Q. Do their families get special protections?

3 A. Not that I'm aware of.

4 MR. CHICK: I have no further questions,  
5 Your Honor.

6 Thanks very much.

7 THE WITNESS: Yes, sir.

8 THE COURT: Counsel for Mr. Jesus Alejandro  
9 Chavez.

10 CROSS-EXAMINATION

11 BY MR. AQUINO:

12 Q. Good morning, Sergeant.

13 A. Good morning, sir.

14 Q. I represent Jesus Chavez. My co-counsel is  
15 Ms. Elita Amato.

16 A. Yes, sir.

17 Q. I have a few questions for you.

18 Is there a specific tattoo as to MS?

19 In other words, specifically an M and an S?

20 A. Yes.

21 Q. Okay. And, to get that specific tag of M and S,  
22 do you have to earn it?

23 A. Yes.

24 Q. Okay. Could you give, quickly, an example of  
25 what would it take to earn that tattoo?

1           A. But I must preface that with the fact that  
2 they're going away from tattooing.

3           Q. I understand that.

4           A. Okay. I mean, historically speaking, when the  
5 gang first started up --

6           Q. Uh-huh.

7           A. -- you had to go through the whole indoctrination  
8 stage, commit an act of violence. Then you earned your  
9 tattoo.

10          Q. So a murder would be an example?

11          A. Yes.

12          Q. Okay.

13          A. But like I said, the whole tattooing thing has  
14 kind of gone --

15          Q. Shifted.

16          A. -- shifted to, like I say, we encounter MS-13  
17 gang members with no tattoos, and have been involved in  
18 acts of violence such as homicide.

19          Q. But do some gang members currently receive that  
20 M and S?

21          A. Some do, yes.

22          Q. Okay. Now, just to go back to, very quickly,  
23 through some vocabulary. You have the gang itself,  
24 right? Like this (indicating). And the gang operates  
25 then through cliques, correct?

1           A.    Yeah.  You have the MS, then you have the -- I  
2 would say spider webbing of cliques.

3           Q.    And each clique has a clique leader?

4           A.    Yes, or two.

5           Q.    Or two.

6                   And then each clique has soldiers that work for  
7 the clique leader, correct?

8           A.    Soldiers or homeboys, as they're referred to.

9           Q.    Okay.  Now, pretend, just for the sake of  
10 argument that I'm a soldier in PVLS, okay?

11          A.    Okay.

12          Q.    And, I kill -- shoot and kill somebody without --  
13 I want to emphasize "without" -- the approval of the  
14 clique leader.  Could I get myself into trouble?

15          A.    Depends on who the victim was.

16          Q.    Okay.  And, if I could get myself into trouble,  
17 is it possible a punishment that I might receive would  
18 be a green light against me?

19          A.    Well, it kind of -- like I say, it encompasses on  
20 who the victim was.

21          Q.    Understood.

22                   So it's a possibility that I could be subject to  
23 a death penalty?

24          A.    That's kind of hard to say, like I said, because  
25 if it's -- the intended target is a rival, you're

1     praised, even though you didn't get the green light, you  
2     did -- you didn't do it by the book, but you're praised  
3     because it's a rival.

4         Q.    What if it's not a rival?

5         A.    Like I say, it all depends. It could be -- if  
6     it's a citizen, like -- the thing with the gang, they  
7     thrive on that violence. I really can't say if that has  
8     to be -- I always I keep saying it's a case-by-case  
9     situation.

10        Q.    Understood.

11        A.    It depends on what it is --

12        Q.    And --

13        A.    -- then you receive a green light.

14        Q.    -- if such a murder occurred, a shooting like  
15     that, it could cause the gang to receive unwanted police  
16     attention; is that correct?

17        A.    Yes.

18        Q.    From somebody like you, correct?

19        A.    That's correct.

20        Q.    Okay. If I was the subject of a green light --  
21     in other words, as a soldier, because of the murder I  
22     committed, to stay alive I might want to shift the  
23     blame; is that accurate?

24        A.    You're the target of --

25        Q.    No, no.

1 A. -- the green light?

2 Q. Let me --

3 A. Can you --

4 Q. I'm the one that committed the shooting.

5 A. Okay.

6 Q. Okay. Killed someone, and because of that it  
7 resulted in a green light against me by the gang  
8 membership. You with me?

9 A. I'm with you.

10 Q. Okay. To stay alive, I might want to shift the  
11 blame, for example, to Mr. Campbell; is that accurate?

12 A. Yeah, to stay alive, yes. That could happen.

13 Q. Now, yesterday, there was some discussion about  
14 gangs that are rivals to MS-13. Okay?

15 A. Okay.

16 Q. And, would it be correct that a minor rival  
17 Hispanic gang is called the Latin Homies?

18 A. Yes, it could be.

19 Q. And their initials are LH; is that correct?

20 A. Yes.

21 Q. And you would not describe Latin Homies as  
22 honest, upstanding, good people, would you?

23 A. I can't speak on that, but, if they're a gang  
24 member and they're committing criminal acts, I will say  
25 they're not upstanding people.



1 Q. Okay. But based upon your knowledge of Latin  
2 Homies, do they distribute marijuana?

3 A. Some do.

4 Q. Okay. Do they steal?

5 A. Some do.

6 Q. Do they engage in acts of violence?

7 A. Some do.

8 Q. Okay. Now, when a Latin Homie sees a member of  
9 MS-13, does -- first, does the MS-13 member consider the  
10 Latin Homie, based upon your knowledge of the gangs, a  
11 *chavala*?

12 A. Yes.

13 Q. And a *chavala* again means a rival gang member?

14 A. Yeah. A *chavala* is a -- interchangeable as a  
15 rival, yes.

16 Q. Okay.

17 A. Because you can have another gang say that MSes  
18 are *chavalas*.

19 Q. Understood.

20 A. Yes.

21 Q. So, for example, an MS-13 member, if he saw  
22 someone he knew to be a Latin Homie, would want bad  
23 things to happen to the Latin Homie.

24 A. Yes.

25 Q. Okay. And the reverse is true, correct?

1 If the Latin Homie saw the MS-13 member, he would  
2 want bad things to happen to the MS-13 member, correct?

3 A. Correct.

4 MR. AQUINO: Judge, that's all the questions  
5 I have. Thank you.

6 THE COURT: Mr. Campbell.

7 REDIRECT EXAMINATION

8 BY MR. CAMPBELL:

9 Q. Good morning, Sergeant.

10 A. Good morning, sir.

11 Q. With respect to your current duties as a sergeant  
12 in charge of the criminal investigation section, do you  
13 actually conduct investigations now of gangs?

14 A. Very minimal.

15 Q. With respect to this case, were you ever an  
16 investigator involved in investigation of this case?

17 A. No, I was never an investigator in this case.

18 Q. Following up to what you said earlier, you said,  
19 generally, leadership has to approve of a green light.  
20 Generally, leadership has to approve of a green light.  
21 Can you elaborate on that?

22 A. Generally, when I say as far as a green light, it  
23 kind of all depends on who the intended target may be.  
24 And we've had situations where a green light was  
25 conducted without an approval of a leader. And like I

1 was, like I say once again, I apologize, it's a  
2 case-by-case situation.

3 Q. By the time someone advances to the position of  
4 *chequeo* within the gang, does he know the gang engages  
5 in violence?

6 A. Oh, yeah. Even, in my expert opinion, they know  
7 going in about the violence.

8 Q. And does that *chequeo* know the gang engages in  
9 murders?

10 A. Yes.

11 Q. With respect to one of the questions that  
12 Mr. Chick asked you on cross-examination, with respect  
13 to the possibility that the government may provide  
14 cooperating defendants or witnesses with witness  
15 protection or may transfer or move their families, why  
16 would the government do that?

17 A. Because the individual cooperator provided  
18 information on a case.

19 Q. And what are the possible consequences with -- in  
20 terms of protection, of providing cooperation?

21 A. The consequences to the individual cooperating is  
22 death.

23 Q. Do all members of MS-13 have "MS" tattooed on  
24 their bodies?

25 A. No.

1 MR. CAMPBELL: No further questions, Your  
2 Honor.

3 THE COURT: May the witness be excused?

4 MR. CAMPBELL: Yes, Your Honor.

5 THE COURT: You're free to leave, sir.  
6 Thank you for coming.

7 THE WITNESS: Thank you, sir.

8 (Thereupon, the witness withdrew from the  
9 stand.)

10 THE COURT: Ladies and gentlemen, I want to  
11 take up a matter with counsel, and I'll have you come  
12 back in just a moment. If you would go with Mr. Toliver  
13 now. Thank you.

14 (Proceedings held outside the presence of  
15 the jury as follows:)

16 THE COURT: You may be seated.

17 Counsel, my understanding is I need to do an  
18 inquiry with the next witness?

19 MR. JENKINS: Yes, Your Honor.

20 As the Court is aware, the next witness is a  
21 client of mine. And I know that Mr. Alfaro Fuentes has  
22 endorsed a written waiver, as Mr. Torres has done, also,  
23 addressing any potential conflicts.

24 The Court did, last March, place Mr. Torres  
25 under oath and inquired of him, notwithstanding the fact

1 that he had signed a written waiver, and the parties  
2 believe that it would be a good idea for the Court to do  
3 the same with Mr. Alfaro Fuentes before he begins his  
4 testimony.

5 I would state for the record that,  
6 consistent with the Court's direction, I have not shared  
7 with Mr. Leiva, my co-counsel in this matter, any  
8 confidential information that I've learned during the  
9 course of my representation of Mr. Alfaro Fuentes, and  
10 Mr. Leiva will be handling the cross-examination of  
11 Mr. Alfaro Fuentes.

12 THE COURT: All right.

13 MR. TOBLER: No objection from the  
14 government, Your Honor.

15 THE COURT: Can the witness be brought up?

16 MR. TOBLER: Yes. The witness -- the  
17 witness is here.

18 THE COURT: Okay. It will be just a few  
19 minutes. Thank you.

20 I think you filed a written waiver, didn't  
21 you, Mr. Jenkins?

22 MR. JENKINS: I did, Your Honor.

23 THE COURT: Okay.

24 MR. JENKINS: I did.

25 MR. TOBLER: The government calls Osmin

1 Alfaro Fuentes, Your Honor.

2 THE COURT: All right. Just a moment. It's  
3 going to take a little bit of time. Be patient. Thank  
4 you.

5 (Pause.)

6 THE COURT: If you like, what we can do is  
7 take the morning recess now, and then we can come back  
8 when the witness is available.

9 How about that?

10 MS. MARTINEZ: Good idea, Your Honor.

11 THE COURT: Let's take a 15-minute recess.  
12 Thank you.

13 MS. MARTINEZ: Your Honor, the witness is  
14 here, just so Your Honor --

15 THE COURT: Oh.

16 MS. MARTINEZ: -- is aware.

17 THE COURT: Oh. Well, then let's do this  
18 now. All right.

19 Ms. Bull, can you administer the oath.

20 Would you stand up, please. Raise your  
21 right hand, please.

22 (Witness sworn.)

23 THE WITNESS: Yes, I do.

24 THEREUPON, OSMIN ALFARO FUENTES, having been  
25 duly sworn, testified as follows:

1 THE COURT: Good morning. Can you tell me  
2 your name, please.

3 THE WITNESS: (Inaudible.)

4 THE REPORTER: I'm sorry.

5 THE COURT: Can you pull the microphone  
6 closer?

7 THE WITNESS: Osmin Alfaro Fuentes.

8 THE COURT: Mr. Fuentes, good morning.

9 THE WITNESS: Good morning, sir.

10 THE COURT: Mr. Fuentes, I've asked you to  
11 come into court for just a moment because I wanted to  
12 talk to you about your right to conflict-free counsel,  
13 and the right you have concerning your representation,  
14 formal representation, by Mr. Jenkins.

15 THE WITNESS: Yes.

16 THE COURT: Mr. Jenkins is in the courtroom  
17 now. Do you see him here?

18 THE WITNESS: Yes.

19 THE COURT: He is representing an individual  
20 in this case, and, my understanding is you're going to  
21 be a witness in this case.

22 THE WITNESS: Yes, sir.

23 THE COURT: Now, Mr. Jenkins probably has  
24 interviewed you and gathered information from you that  
25 is secret, that he has to keep secret.

And, what I wanted to talk to you about was waiving your right to have Mr. Jenkins be a counsel in a case where you were a witness. That is to say that Mr. Jenkins will not use information you've given him. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: And he will also not question you. You will be questioned by co-counsel. And Mr. Jenkins just told me he has not told co-counsel anything about the secrets you told him. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Now, you have the right to waive the conflict, meaning to allow Mr. Jenkins to continue to represent Mr. Torres, or not to. Are you -- what is your -- are you willing to let Mr. Jenkins represent Mr. Torres?

THE WITNESS: Yes, sir.

THE COURT: And, are you willing to waive any potential interest of conflict with Mr. Jenkins concerning your testimony?

THE WITNESS: Yes, sir.

THE COURT: All right. I think that makes a sufficient record under Rule 44.

We'll have you back in just a moment. We



1 will take a break and have you come back in about  
2 15 minutes. Thank you very much.

3 THE WITNESS: Yes, sir.

4 (Court recessed at 11:13 a.m. and reconvened  
5 at 11:31 a.m.)

6 (Jury not present.)

7 MR. JENKINS: Good morning, Your Honor.

8 Robert Jenkins on behalf of Mr. Torres.

9 I anticipate that the government is going to  
10 offer Government's Exhibit Number 125. For the Court's  
11 benefits, Your Honor, that is a copy of Mr. Alfaro  
12 Fuentes' plea agreement. On the final page of that  
13 agreement, Your Honor, as the Court is well aware, my  
14 name and signature appears as Mr. Alfaro Fuentes'  
15 counsel.

16 Your Honor, it's the view of the parties,  
17 Mr. Torres as well as the government, that while that  
18 may be admissible, the contents of 125, that it would be  
19 more prudent to redact my name from it, so that when it  
20 goes back into the jury room the jury need not concern  
21 themselves with the fact that I represent Mr. Torres as  
22 well as representing Mr. Alfaro Fuentes.

23 I suspect that there will be a fair amount  
24 of discussion about benefits that Mr. Alfaro Fuentes  
25 derived from that agreement, which I negotiated on his

1     behalf.

2             I further would ask the Court, as a motion  
3     in limine, to instruct all counsel -- I don't see the  
4     relevance of it -- to be barred from mentioning the fact  
5     during their examination that I represent Mr. Alfaro  
6     Fuentes, in the presence of the jury.

7             THE COURT: All right.

8             Any objection?

9             (No audible response.)

10            THE COURT: So the order is that we'll  
11     first -- I don't have a Sharpie here with me. You all  
12     make sure you redact Mr. Jenkins' name from 125.

13            MR. TOBLER: Your Honor, the government will  
14     bring up a copy for the exhibit binder as well, with  
15     that information redacted.

16            THE COURT: Excellent. All right.

17            And then, also, all counsel refrain from  
18     referring to Mr. Jenkins as counsel for Mr. Fuentes.

19            Ready to bring the jury out?

20            MR. TOBLER: We're ready.

21            THE COURT: Let's bring our jury out,  
22     please. Thank you.

23            (Jury present at 11:34 a.m.)

24            You may be seated.

25            All right, Counsel, you may proceed.

1 MR. TOBLER: Your Honor, the United States  
2 calls Osmin Alfaro Fuentes.

3 (Witness previously sworn.)

4 THE COURT: Mr. Fuentes has previously been  
5 sworn.

6 You may proceed, Counsel.

7 THEREUPON, OSMIN ALFARO FUENTES, having been  
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. TOBLER:

11 Q. Good morning, Mr. Fuentes.

12 A. Good morning.

13 Q. Please state your name and spell it for the jury.

14 A. Osmin Alfaro Fuentes. O-s-m-i-n, Osmin;  
15 A-l-f-a-r-o, Alfaro; F-u-e-n-t-e-s, Fuentes.

16 Q. What is your native language, sir?

17 A. Spanish.

18 Q. Do you also speak English?

19 A. Yes.

20 Q. If at any point you would like to use the  
21 services of the Spanish interpreter, either to hear my  
22 questions or to respond, please feel free to do so. Do  
23 you understand?

24 A. Yes, sir.

25 Q. How old are you, sir?

1 A. 37.

2 Q. Where were you born?

3 A. In El Salvador.

4 Q. How far in school did you go in El Salvador?

5 A. Ten, ten grade.

6 Q. When did you come to the United States?

7 A. 1996.

8 Q. How did you get to the United States?

9 A. I crossed the border through Yuma, Arizona,  
10 illegally.

11 Q. Where did you first go after crossing the border  
12 at Yuma, Arizona?

13 A. I went to Los Angeles.

14 Q. How long were you in Los Angeles?

15 A. A month.

16 Then I moved to Herndon, Virginia.

17 Q. Why did you move to Herndon, Virginia?

18 A. I had a brother over here.

19 Q. Have you ever been in a gang?

20 A. Yes.

21 Q. What gang?

22 A. MS-13.

23 Q. Were you in a particular clique in MS-13?

24 A. Yes. In the Western.

25 Q. How did the Western clique get its name?

1 A. It's a street from Los Angeles.

2 Q. When did you join MS-13?

3 A. The same year, 1996.

4 Q. How old were you at the time you joined MS-13?

5 A. Seventeen years old.

6 Q. Where were you living at that time?

7 A. Herndon, Virginia.

8 Q. When a person joins MS-13, are they given a  
9 nickname?

10 A. Yes, sir.

11 Q. Were you?

12 A. Yes. Buso.

13 Q. What does Buso mean?

14 A. Buso is a person who is always in a lookout,  
15 ready for anything.

16 Q. Are you currently in prison?

17 A. Yes, sir.

18 Q. Are you in prison for having pled guilty to  
19 murder in aid of racketeering?

20 A. Yes, sir.

21 Q. What year did you plead guilty to that crime?

22 A. 2005.

23 Q. Was that for a murder you committed with another  
24 member of MS-13?

25 A. Yes, sir.

1 Q. Who was that other member?

2 A. His name was Alirio Reyes. They call him Psycho.

3 Q. Where did you plead guilty to the crime?

4 A. In Alexandria courtroom.

5 Q. Did you -- were you sentenced at that time?

6 A. Yes.

7 Q. What sentence did you receive at the time you  
8 pled guilty?

9 A. Life.

10 Q. With the assistance of the courtroom security  
11 officer, I'd like you to look at a document that's been  
12 marked for identification as Government's Exhibit 125.

13 Do you recognize that document, sir?

14 A. Yes, sir. It's the plea agreement.

15 Q. Please turn to the last page. Is that your  
16 signature on this plea agreement?

17 A. Yes, sir.

18 Q. What are your obligations under this plea  
19 agreement?

20 A. Obligation is to tell the truth and testify at  
21 any time the government wishes me to.

22 Q. How many times have you testified?

23 A. This would be my eighth time.

24 Q. Have you received a sentencing reduction in  
25 exchange for your testimony?

1 A. Yes, sir.

2 Q. What reduction did you receive?

3 A. Fifteen years.

4 Q. Has anyone made any promises to you other than  
5 what's in that plea?

6 A. No, sir.

7 MR. TOBLER: Your Honor, we move for  
8 admission of Government's Exhibit 125.

9 THE COURT: 125 will be received.

10 BY MR. TOBLER:

11 Q. Are you familiar with the term "homeboy"?

12 A. Yes.

13 Q. What is a homeboy in MS-13?

14 A. Homeboy is like you call a -- it's like a  
15 brother. You -- you want to -- a partner within the  
16 gang.

17 Q. Did you -- I'm sorry. Did you say you're a  
18 partner within the gang?

19 A. Yeah. It's like your brother, brotherhood,  
20 thing.

21 Q. Is everybody who is associated with MS-13 a  
22 homeboy?

23 A. If it's not a member, no.

24 Q. At some point, did you become a homeboy in MS-13?

25 A. Yes, sir.

1 Q. When?

2 A. In 1996, when I was jumped in to the gang.

3 Q. What does it mean to be jumped in to the gang?

4 A. That's when you been initiated to get into the  
5 gang.

6 Q. What happens during a jumping in?

7 A. Well, you will be beat up by three or four guys  
8 for thirteen seconds.

9 Q. Once you joined the gang, did you ever attend  
10 clique meetings?

11 A. Yes, sir.

12 Q. How frequently?

13 A. We have a weekly meetings, and there are general  
14 meetings, too; but, mostly weekly.

15 Q. Where did the clique meetings occur?

16 A. Sometimes we had -- we held them in the hotel  
17 parties, or parks.

18 Q. What happened at those meetings?

19 A. In those meetings, you know, we talk about  
20 what's -- what has been going on throughout the week,  
21 and collect money.

22 Q. Who paid the money when you collected it?

23 A. Everybody within the clique.

24 Q. Were members of the clique required to pay money?

25 A. Yes.



1 Q. How much money were they required to pay?

2 A. It all depends, what -- what amount of money you  
3 are required to bring, 20, 25, \$50.

4 Q. Per week?

5 A. Yes, sir.

6 Q. What was that money used for?

7 A. That money used for sending to the homies in  
8 prison, jail, or to bail out anybody.

9 Q. Where did you send the money?

10 A. Jails or -- or we used the money to send it to  
11 El Salvador, too.

12 Q. How did you send money to El Salvador?

13 A. Wire.

14 Q. When you were in MS-13, did your clique contact  
15 MS-13 members in El Salvador as well?

16 A. Yes, sir.

17 Q. How did you do that?

18 A. By telephone.

19 Q. Are you familiar with the term, "first word"?

20 A. Yes, sir. First word is the leader of the  
21 clique, first. And then there is the second word, which  
22 is the second one.

23 Q. When you were in MS-13, did you ever hold a  
24 leadership position?

25 A. Yes, sir. I had the second word.

1 Q. Were you active in MS-13 up until the time of  
2 your arrest for murder?

3 A. Yes, sir.

4 Q. Were you still the second word at the time of  
5 your arrest for murder?

6 A. Yes, sir.

7 Q. You mentioned before a general meeting. What is  
8 a general meeting?

9 A. A general meetings is when all the cliques come  
10 together to discuss major issues among the gang.

11 Q. Have you ever attended a general meeting?

12 A. Yes.

13 Q. Does MS-13 have rules?

14 A. Yes.

15 Q. When did you learn the rules of MS-13?

16 A. Right after I was jumped.

17 Q. What rules does the gang have regarding  
18 cooperating with law enforcement?

19 A. Well, if you cooperate with law enforcement, you  
20 would be a -- put a green light on you.

21 Q. What does -- what do you mean when you use the  
22 word "green light"?

23 A. A green light is when you been marked to be  
24 killed for a snitch.

25 Q. What other reasons might a person get a green

1 light?

2 A. One other reason could be that you keep breaking  
3 small rules, you eventually will be given a green light,  
4 too.

5 Q. What if you attempt to leave the gang?

6 A. Oh, you can't leave the gang. Everybody knows  
7 that.

8 Q. Who can order a green light?

9 A. Well, a green light could be anybody will get in  
10 a green light, you know, there would be a meetings to be  
11 held and everybody would come together and agree.  
12 But -- (pause).

13 Q. If someone has a green light, are members of  
14 MS-13 expected to carry out that green light?

15 A. Yes, sir.

16 Q. What does it do for a member's reputation if they  
17 carry out a green light?

18 A. They will gain a lot of respect.

19 Q. Is respect important in MS-13?

20 A. Yes, sir, it is.

21 Q. Are you familiar with the term *calentón*?

22 A. *Calentón*, yes.

23 Q. What is a *calentón*?

24 A. *Calentón* is when you get beat up, punished for  
25 breaking the -- any small rule.

1 Q. Who delivers a *calentón*?

2 A. Members within the clique.

3 Q. Are you familiar with the term *chavala*?

4 A. Yes.

5 Q. What is a *chavala*?

6 A. We use that word for a -- to describe a rival  
7 gang member.

8 Q. What gangs are considered chavalas, by MS-13?

9 A. All gangs that are not MS. Everybody that is not  
10 an MS is considered to be a *chavala*.

11 Q. What are MS-13 members supposed to do if they see  
12 a *chavala*?

13 A. Every time you come across a *chavala*, your duty  
14 is to beat them up, confront them, stab them, kill them.

15 Q. And what happens to MS-13 members who attack  
16 *chavalas*?

17 A. Well, they respect a lot.

18 Q. What if an MS-13 member kills a *chavala*?

19 A. It's even better for them.

20 Q. When you were in MS-13, did you learn any MS-13  
21 hand signs?

22 A. Yes, sir.

23 Q. Would you please demonstrate them for the jury.

24 A. This is what we use for representing gang sign  
25 (indicating), which means, if I go like this to anybody

1 on the street, it means, I'm telling them that I am an  
2 MS-13. We call this the claw, also.

3 THE COURT: Just a second. You called it  
4 the claw?

5 THE WITNESS: Yeah.

6 THE COURT: The record should reflect that  
7 he is holding his index finger and baby finger up, and  
8 his two fingers are folded over the thumb.

9 BY MR. TOBLER:

10 Q. Please describe your tattoo on your forehead for  
11 the jury.

12 A. Ah, the tattoo above your neck means that you  
13 must have done something serious.

14 Q. Why did you get that tattoo?

15 A. I was drunk.

16 Q. Do you have any other tattoos?

17 A. Yes, sir.

18 Q. Please describe them.

19 A. I have an "M" on my right arm, an "S" over here  
20 on my left one. A "1" on my right arm, and "3" on my  
21 left. And a claw on my chest.

22 Q. Please describe the tattoos on your hands.

23 A. I got the three dots over here, and "Su Trece,"  
24 which means south -- south side -- south -- southerner.  
25 We're under the Eme kind of rules, you know, the Mexican

1 mafia.

2 Q. What do the three dots mean to you?

3 A. Three dots is a crazy life, or three rules where  
4 we eventually will end up, which is the hospital,  
5 cemetery or prison.

6 Q. When did you get these tattoos?

7 A. This one, I got it in 2003. And the rest of them  
8 I got it like in -- late '90s.

9 Q. Before you went to prison?

10 A. Yes, sir.

11 Q. You mentioned before that you moved from Los  
12 Angeles to Virginia. Where did you move after Virginia?

13 A. I moved to Maryland.

14 Q. When did you move to Maryland?

15 A. 1997.

16 Q. Were you convicted of robbery in Maryland?

17 A. Yes, sir.

18 Q. What year?

19 A. 2001.

20 Q. How long did you serve on that robbery?

21 A. A year.

22 Q. When you got out, did you meet any members of  
23 MS-13 in Maryland?

24 A. Yes, sir.

25 Q. From what clique?

1       A.    Um, there were all kinds of cliques in there at  
2   that time. It was like I would call like a salad, you  
3   know it was like, one member from Sailors and one member  
4   from Normandies.

5       Q.    Did you ever have any conflicts with these  
6   members?

7       A.    Yes.

8       Q.    Please describe that conflict.

9       A.    I was at a party that was held by the Sailors  
10   clique. The leader of that clique begun disrespecting  
11   me. And then I called him out to fight. Then I left  
12   the party and he came after me. And when they catch up  
13   to me, they stab me.

14      Q.    How many people caught up with you?

15      A.    Like eight people.

16      Q.    Do I understand correctly that these were members  
17   of MS-13?

18      A.    Yes, sir.

19      Q.    From another clique?

20      A.    Yes, sir. Sailors clique.

21      Q.    How many times did they stab you?

22      A.    Sixteen.

23      Q.    Were you hospitalized afterwards?

24      A.    Yes. I went to the hospital for six days.

25      Q.    Where did you go after you got out of the

1 hospital?

2 A. I went to stay with my sister, and then I moved  
3 back to Virginia.

4 Q. Was a meeting ever held to resolve this conflict  
5 between you and members of the Sailors clique?

6 A. Yes, it was.

7 Q. What decision was made about how that would be  
8 resolved?

9 A. Well, after the Sailors and I finished each side  
10 of the story, everybody in the meeting requested for us  
11 to carry on a mission to go kill a *chavala*.

12 Q. Why were you -- why did you receive that mission?

13 A. Because there were -- there was blood shed  
14 between us.

15 Q. Were you and the other member of Sailors ever  
16 able to carry out your mission together to kill a  
17 *chavala*?

18 A. No. Because the Sailors were living in Virginia,  
19 they were staying in -- I mean in Maryland, excuse me,  
20 and I was over here in Virginia.

21 But then, we had another meeting, and there was  
22 another conclusion that, you know, we shouldn't wait for  
23 each other, and that I should carry on my mission here  
24 and they would carry their own mission over there.

25 Q. And when you say carry on your mission, you mean



1 to kill a *chavala*?

2 A. Yes, sir.

3 Q. After your mission changed, when did you first  
4 attempt to carry it out?

5 A. In the beginning of 2004.

6 Q. Where?

7 A. I was in a hotel party with some ULS members,  
8 when one of them received a phone call from another ULS  
9 member saying that he was in another party, and in this  
10 party there were chavalas attending, too.

11 So, you know, I say, you know, this is my --  
12 great opportunity for me to go over there and carry on  
13 my mission.

14 Q. You used the term "ULS." What does ULS means?

15 A. That's another clique.

16 Q. Did you go to that other party where you heard  
17 there were chavalas?

18 A. Yes. I went first to pick up a gun with another  
19 ULS members, and then we headed to this party.

20 Q. What kind of gun did you pick up?

21 A. A 38.

22 Q. Whose gun was that?

23 A. Mine.

24 Q. Were others allowed to use that gun?

25 A. Yes, sir.

1 Q. Once you got to the party, did you see anyone you  
2 thought was a *chavala*?

3 A. Yes. When we got to this party, we hopped out of  
4 the car, spot -- and this guy Sparky and I. And Sparky  
5 seems to know some *chavalas*, he was pointing at me a  
6 *chavala*. But there was a lot of people walking on the  
7 sidewalk, so it was kind of difficult for me to just --  
8 to see who he was pointing at.

9 So, we were doing that, while -- then a car was  
10 passing by, and this guy caught my attention, a guy that  
11 was in this car, because he was yelling out of the  
12 window. He was the passenger guy. He was insulting me,  
13 cursing me.

14 And so when I looked around and I noticed this  
15 guy, he was wearing a red bandana across his forehead.  
16 So, I automatically knew that he was a *chavala*, and I  
17 say, you know, I say, "La Mara," and then I start  
18 shooting.

19 Q. What did -- why, when you saw the red bandana,  
20 did you think that he was a *chavala*?

21 A. Red is the color of a rival gang member.

22 Q. How far away were you when you started shooting?

23 A. Like from here to that table.

24 Q. How many shots did you fire?

25 A. Five.

1 Q. What did you do after you got done firing?

2 A. I took off running. And, then I thought a car  
3 was following me, so I fired another shot, hopped into  
4 the car and left the area.

5 Q. Did you ever learn whether you killed anyone that  
6 night?

7 A. Yes. Later I was told that I didn't hit anybody,  
8 thanks God.

9 Q. Was your mission accomplished at that point?

10 A. No, sir.

11 Q. After that night, what's the next time you  
12 attempted to carry out your mission to kill a *chavala*?

13 A. On -- like a month later, Seco and I went to  
14 visit these two girls --

15 Q. Do you remember the date, sir?

16 A. It's May 16, 2004.

17 Q. Where did you go that day?

18 A. We went to -- to check on these girls we were  
19 dating. But when -- but when we got to this parking lot  
20 of this townhouse, we noticed that this guy, Negro, was  
21 there, so -- Negro is another guy that was from my  
22 clique.

23 So we decided to go to where he was at. So, a  
24 little bit while after we were talking with Negro, we  
25 noticed that these two person was walking across were --

1 from where we were at, and Seco and I decided to go  
2 check on them to see if they were any chavalas.

3 Q. The person you were with that day when you went  
4 to see Negro, who was that person?

5 A. Seco.

6 Q. What neighborhood were you in at that time?

7 A. Somewhere around Herndon.

8 Q. Why did you think the two people walking, that  
9 you saw, were chavalas?

10 A. Because that neighborhood right there was  
11 known that a lot of chavalas live there.

12 Q. What did you do after you saw the chavalas?

13 A. Well, we -- we were -- followed them, and then  
14 when we catch up to them, I crossed the path. I stood  
15 in front of the -- the people, and I -- I started  
16 talking to the guy and to make sure that he was a  
17 *chavala*.

18 I told him that I was an 18th Street, that I  
19 was -- that I just had moved over there to that  
20 neighborhood and that I was looking for homies to kick  
21 with.

22 So as soon as I said that, he said, "I am an 18th  
23 Street, too." And, so that's when I saw Seco shot him.

24 Q. Was that tattoo on your head at the time?

25 A. Yes, sir.

1 Q. How did you expect them to believe you were  
2 members of a 18th Street gang?

3 A. I was wearing a visor.

4 Q. Is 18th Street gang considered a *chavala* gang?

5 A. Yes, sir.

6 Q. What -- what were you and Seco intending to do  
7 when you followed those two people you thought might be  
8 chavalas?

9 A. Like, what we do, you know, when we confront a  
10 *chavala*, to hit them, kill them.

11 Q. Was Seco armed when you went to follow those  
12 chavalas?

13 A. Yes, sir.

14 Q. What happened after the -- what question did you  
15 ask the young man in the street?

16 A. Oh, I was telling him that I was an 18th Street,  
17 that I was looking for homies to kick it, because I just  
18 had moved to the area.

19 Q. Where was Seco standing at that time?

20 A. He was behind the guy, to his right.

21 Q. And what happened next?

22 A. He shot him, as soon as the -- as soon as the guy  
23 say that he was an 18th Street.

24 Q. How many times did Seco shoot him?

25 A. Three times.

1 Q. You mentioned before, there was another person  
2 with him?

3 A. Yes.

4 Q. Who was with him?

5 A. A girl.

6 Q. What happened to her?

7 A. Well, after we left, we got to the house, to my  
8 house, Seco -- Seco told me that he had shot the girl.

9 MR. CONTE: Objection. Hearsay.

10 THE COURT: Excuse me?

11 MR. CONTE: It's hearsay.

12 MR. TOBLER: It's offered for the effect on  
13 the listener.

14 THE COURT: Offered for the effect of the  
15 listener?

16 MR. TOBLER: Offered for the effect on the  
17 witness.

18 THE COURT: Objection sustained.

19 MR. TOBLER: You can answer -- excuse me.

20 BY MR. TOBLER:

21 Q. What -- what did you -- where did you go right  
22 after the shooting?

23 A. We went to my house.

24 Q. And why did you go to your house?

25 A. Because we want to change into new clothes and,

1 you know, we want to get away from -- from the scene.  
2 And that's when we talk a little bit about what  
3 happened.

4 Q. Where did you go after that?

5 A. After that, we -- the next day, um, we went to  
6 Fredericksburg.

7 Q. Why?

8 A. So -- was trying to get away from Herndon.

9 Q. Who did you stay with in Fredericksburg?

10 A. With another homie of my clique.

11 Q. Where were you ultimately arrested?

12 A. In Los Angeles.

13 Q. How did you pay to get to Los Angeles?

14 A. From money from my clique, the homies brought us  
15 to -- to go over there.

16 Q. After your arrest, were you extradited back to  
17 Virginia?

18 A. Yes, sir.

19 Q. Is that where you were charged with murder in aid  
20 of racketeering?

21 A. Yes, sir.

22 Q. And you pled guilty to that charge?

23 A. Yes, sir.

24 MR. TOBLER: No further questions, Your  
25 Honor.

1 THE COURT: You may proceed.

2

3

CROSS-EXAMINATION

4

BY MR. LEIVA:

5

Q. Good afternoon, Mr. Fuentes.

6

A. Good afternoon, sir.

7

Q. Mr. Fuentes, I'm going to ask you some questions.

8

And if you don't understand my questions, please let me

9

know and I'll do my best to either rephrase the question

10

or repeat it. Understood?

11

A. Yes, sir.

12

Q. And these same accommodations can be made for

13

you. If you need to go through an interpreter, please

14

let me know.

15

A. Thank you.

16

Q. All right.

17

So your name, Buso, means -- what was the

18

definition of that?

19

What was your understanding of why you were given

20

that name?

21

The quick one, right?

22

A. Yes.

23

Q. In other words, someone who reacts very fast,

24

right?

25

A. Someone who is ready for anything.



1 Q. Ready for anything, right?

2 It also means someone that's sharp, right?

3 Someone that's smart, astute?

4 A. I wouldn't say that.

5 Q. But, that is the definition of it, is it not?

6 A. Buso is like somebody that's ready for anything.

7 Q. *Listo*?

8 A. Lookout.

9 Q. Now, let's talk about -- you were asked about  
10 gang rules, Mr. Fuentes, and you talked about, of  
11 course, one of the prominent rules is that you cannot  
12 cooperate with the police or with -- or with the  
13 government; is that right?

14 A. Yes, sir.

15 Q. So, something as simple, for example, as walking  
16 up to a patrol officer and saying, "Officer, I just saw  
17 that guy steal a bike," you can't do if you're MS-13?

18 A. No, you can't cooperate with them at all.

19 Q. Even if it has nothing to do with you or your  
20 boys or your case, you just can't cooperate with them,  
21 period.

22 A. No, sir.

23 Q. And, that, also, of course, includes testifying  
24 in court. You can't testify in court, can you?

25 A. No, sir.

1 Q. Under no circumstances are you allowed to testify  
2 in court?

3 A. Not to cooperate at all.

4 Q. Okay. It's better as a homeboy to remain quiet  
5 and go to jail than to testify in court, right?

6 A. Well, if you're in the gang, that's the rules.

7 Q. That's the rules.

8 And, as a homeboy, you're worried about your own  
9 life being at risk, right, if you cooperate or if you  
10 testify?

11 A. Yes.

12 Q. And, you're also concerned about placing your  
13 family's life at risk if you cooperate or testify.

14 A. Yes, sir.

15 Q. And, of course, that's something that every  
16 homeboy knows going into MS-13.

17 A. Yes, sir.

18 Q. And let's talk about another rule about the Mara.  
19 You're not required to identify yourself when you're  
20 asked if you're part of MS-13, are you?

21 A. What do you mean?

22 Q. Well, if a police officer walks up to you and  
23 say, "Are you MS-13," are you required to say, "Yes, I'm  
24 MS-13"?

25 A. No, you -- you don't say that.

1 Q. And, I apologize, I know these sound like silly  
2 questions and a lot of it is common sense, but I still  
3 need to ask you.

4 A. All right.

5 Q. All right?

6 And, for example, if you're walking with your mom  
7 out of the grocery store and some *chavala* approached you  
8 and they say, "Hey, you're MS-13," you're not required  
9 to divulge that right then and there, are you?

10 A. No. You got to -- you got to answer that, yeah,  
11 you are.

12 Q. Oh. So, when you're with your mom, even in the  
13 grocery store, and you've got four 18th Street guys  
14 around you, and they ask you, "Are you MS-13," you're  
15 supposed to say, "Yeah"?

16 A. Of course. It doesn't matter. You can't never  
17 deny your gang.

18 Q. But, you can deny it when the police ask you,  
19 right?

20 A. Yeah, because you never -- you can't tell the  
21 police what -- who you are or what you're doing.

22 Q. Yeah, but, the worst that happens if you admit  
23 something to the police is they arrest you, right?

24 That's the worst that happens --

25 A. Right.

1 Q. -- right?

2 You admit to four or five 18th Street gang  
3 members, while you're with your mom leaving the grocery  
4 store, that you're MS-13, what's the worst that's going  
5 to happen to you?

6 A. Well, because like I say before --

7 Q. What is the worst that can happen to you?

8 A. Like what?

9 Q. You would be killed, right?

10 Isn't that the worst that could happen to you?

11 A. Yes. But when you're in the gang -- in the gang,  
12 your job is to confront, like I said before, confront  
13 and do whatever it takes with any *chavala*. It doesn't  
14 matter who is around. But, the rule is not to ever  
15 cooperate with the police.

16 Q. So, the rule is you confront chavalas no matter  
17 who is around. So, if you're walking back from your day  
18 job, right, you're walking through an 18th Street  
19 neighborhood, you see 20 18th Street members, the rule  
20 is you go and throw yourself in there, right?

21 A. Yeah. Why not?

22 Q. Eighteen guys.

23 A. Yeah. Why not?

24 Q. Why not?

25 A. Yeah.

1 Q. So, what's the whole reason, then, to have secret  
2 hand shakes, signs, tattoos on your forehead, if all  
3 anyone has to do is ask you, "Are you MS-13?"

4 Is it really that simple?

5 A. Well, you know, you got to represent to the --  
6 either way. Let them know that, that you're for real.  
7 Because, any -- I mean --

8 Q. But you guys have secret hand shakes, do you not?

9 A. Well, we just go like this (indicates).

10 Q. You guys have secret signs that you send to each  
11 other, right?

12 Isn't that what you said, to let someone else  
13 know that you're MS-13?

14 A. Right.

15 Q. All right. That's why I'm a little confused,  
16 because you're making it sound like it's so simple, that  
17 it's, "Hey, just come up and ask me who I am or who I  
18 rep with, as long as I'm not the police."

19 It's not that simple, is it, Mr. Fuentes?

20 A. With the police?

21 Q. No, no. The way you're making it sound is, all  
22 you need to do is ask me if I'm MS-13, and I will tell  
23 you, unless you are the police.

24 A. Look, I'm -- I'm not just going to approach to  
25 anybody, I mean, I'm an MS-13, I'm regular person. You

1 could tell right away who is a *chavala* and who is not.

2 Q. All right. Let's talk about that. You could  
3 tell right away who a *chavala* is. And by that you mean  
4 the color they wear, right?

5 A. Nah, the way they dress, and, also the colors.

6 Q. Right.

7 And you testified that one of the colors that one  
8 of the rival gangs, 18th Street, is they wear red.

9 A. Yes, sir.

10 Q. Okay. And, so, when you're out there looking for  
11 *chavalas*, that's what you look for, to see, hey, who  
12 fits that role, right?

13 A. Right.

14 Q. Who is walking like a gang banger, who is dressed  
15 like a gang banger, who may be throwing up signs, right?

16 A. Right.

17 Q. Okay. And, you mentioned also about gaining  
18 respect within the gang.

19 A. Yes, sir.

20 Q. And let's talk about that. Respect is very big  
21 in MS-13, is it not?

22 A. Yes, sir.

23 Q. All right. And your reputation is based on the  
24 respect that you get from the homies and the things that  
25 the homies think that you have done, right?

1 A. Yes, sir.

2 Q. And, you were in the gang for how long before you  
3 pled guilty and agreed to cooperate with the government?

4 A. Around eight years and a half.

5 Q. Eight years and a half. All right.

6 And, during that time period, you would agree  
7 with me, Mr. Fuentes, that you heard a lot of homies  
8 brag about their past deeds on behalf of the gang,  
9 right?

10 A. Yeah.

11 Q. Yes?

12 A. On their past what?

13 Q. Their past deeds, their past actions that they  
14 did --

15 A. Okay.

16 Q. -- on behalf of the gang, right?

17 A. Right.

18 Q. All right. And, you would agree with me that  
19 some homies tended to exaggerate about what they did on  
20 behalf of the gang?

21 A. I can't agree with you with that, because they  
22 are just telling me the story what they did. I was  
23 never there.

24 Q. Okay. But, you would agree with me that when you  
25 guys would get together, get high and drink, they would

1 tell you stories about some of the violent stuff that  
2 they did, right?

3 A. Right.

4 Q. Right. Because, they wanted to get respect from  
5 you, right?

6 A. Yes.

7 Q. They wanted to show what you were made -- what  
8 they were made of.

9 A. Yes, but, that -- that -- that could be true.

10 Q. That's all I'm asking.

11 Now, you were asked on direct examination about  
12 the charge that you were facing and the fact that you  
13 pled guilty to it, right? So, let's focus on that.

14 You testified that you pled guilty, and the  
15 punishment that you were to receive was life in prison.

16 A. Yes, sir.

17 Q. But, before you entered that plea of guilty, you  
18 already knew that you were going to cooperate with the  
19 government, right?

20 A. I didn't know that.

21 Q. Oh. So, you walked into a life sentence; is that  
22 what you're telling us?

23 A. What are you talking about? You got to give me a  
24 time period. You sound like -- what was -- I need to  
25 know, are you talking about before, before right before



1 the -- I plead out, or --

2 Q. The day --

3 A. -- when I got arrested?

4 Q. The day that you were in court and you agreed to  
5 plead guilty to murder in aid of racketeering --

6 A. Okay.

7 Q. -- that day that you stood before Judge Ellis,  
8 you knew that you were going to cooperate?

9 A. Yes, sir.

10 Q. Okay. So, it wasn't one of these things that,  
11 hey, you were a soldier and you were going to do what's  
12 right and you were going to go ahead and plead guilty to  
13 life and serve life. You already knew that you were  
14 going to start ratting people out, right?

15 A. Yes, sir.

16 Q. All right. And you already knew that that was  
17 your way out of getting a life sentence, was to  
18 cooperate?

19 A. That's what I was hoping. But at the end of the  
20 days it's up to the judge.

21 Q. Yeah, but you were given an idea, weren't you?

22 A. Yeah, but I didn't know. I mean, what I'm saying  
23 is they could tell me, "Yeah, we're going to submit a  
24 motion for a reduction of sentence," but at the end of  
25 the days it's up to the judge. If the judge is going to

1 go along or not, it's up to the judge.

2 Q. And I understand that.

3 And you were told -- and I'm not referring to  
4 what your attorney told you. You probably talked to a  
5 lot of people. But you knew that the level of reduction  
6 that you would receive from that life sentence depended  
7 on the amount and the quality of cooperation that you  
8 gave the government.

9 A. As long as I was truthful and honest.

10 Q. Okay. So, you knew going in there that when you  
11 were pleading guilty that day in front of Judge Ellis,  
12 you were going to get something that's less than life?

13 A. Yes. But I also didn't know what -- how much it  
14 was going to be.

15 Q. All right. But, you were told as long as you  
16 were a soldier on behalf of the government, they would  
17 take care of you, right?

18 A. Soldier?

19 Q. I'm trying to talk the language that you would  
20 understand.

21 As long as you were a soldier for the government,  
22 right, they would take care of you?

23 A. That's what I was hoping. But like I say, you  
24 know, it would have been at the end of the judge -- at  
25 the end of the day --

1 Q. Well --

2 A. -- with the judge.

3 Q. -- let's get around -- get away from what you  
4 were hoping. Tell the members of the jury what sentence  
5 you actually did receive.

6 A. Fifteen years.

7 Q. So you went from life to 15 years?

8 A. Yes, sir.

9 Q. What about your immigration status before you  
10 pled guilty, or the day that you pled guilty. What was  
11 it?

12 A. Illegal.

13 Q. Were you illegal?

14 A. Yes.

15 Q. All right. And, what did the government promise  
16 you as far as helping you with your immigration status?

17 A. They haven't promised me anything.

18 Q. All right. So, the government has told you  
19 they're going to deport you after those 15 years?

20 A. I mean, they will recommend for me to stay here,  
21 but that's not a promise.

22 Q. No, no. But that's an inquiry that you made,  
23 right?

24 A. Because you know --

25 A. Well, I hope so.

1 Q. Hold on a minute.

2 Because you know that you've testified, and that  
3 if you get deported back to El Salvador, something bad's  
4 going to happen to you, right?

5 A. Yes, sir.

6 Q. All right. So, you're smart enough to make  
7 inquiries, or you made inquiries that they needed to  
8 help you out with your immigration status in this  
9 country.

10 A. That's what I'm hoping.

11 Q. You made inquiries, right?

12 A. That's what I'm hoping.

13 Q. And, you have no reason to believe that they  
14 won't follow through on that, that they're actually  
15 going to allow you to stay in this country.

16 A. Would you repeat that question?

17 Q. You keep saying you hope that that's what they're  
18 going to do.

19 A. Okay.

20 Q. But, really, you've met with multiple FBI agents,  
21 right, during this time that you agreed to be a  
22 cooperating witness, right?

23 A. Right.

24 Q. Right. You met with multiple assistant U.S.  
25 attorneys --

1 A. Right.

2 Q. -- right?

3 You've testified in eight different trials on  
4 behalf of the government --

5 A. Right.

6 Q. -- right?

7 And, you have reason to believe that they're  
8 going to help you out with your immigration status,  
9 given everything that you've done for them?

10 A. Listen. That's what I'm hoping, but either --  
11 even though there is a -- there is an INS law that will  
12 protect me from that, too, because, for who I am now, a  
13 snitch -- um --

14 Q. Are you talking about your snitch visa, or are  
15 you talking about you're going to now claim political  
16 asylum?

17 A. Either one, hopefully.

18 Q. All right. And political asylum, of course, you  
19 knew about that before you testified here today, right?

20 A. Yes, sir.

21 Q. All right. And political asylum basically means  
22 you're going to tell the U.S. Government, "Hey, I can't  
23 go back to El Salvador because I fear that if I go back  
24 there, I'm going to be persecuted, tortured or killed."

25 A. Well, if I go, yeah.

1 Q. And, let's see if you can help me out here with  
2 the calculation. It's been what, about 11 years since  
3 you've been an active member of MS-13?

4 A. An acting member?

5 Q. Active.

6 A. I told you, eight and a half --

7 Q. No, no, no.

8 A. -- before I got arrested.

9 Q. I know you were an active member for eight and a  
10 half years. But, you pled guilty in 2005, right?

11 A. Right.

12 Q. Okay. So, it's been about 10 or 11 years since  
13 you've been active in MS-13?

14 Or are you active in the prison in MS-13? I may  
15 be mistaken.

16 A. I'm not MS-13 any more. I would say I'm a  
17 former.

18 Q. Okay. So you've been a former MS-13 member for  
19 well over ten years now, right?

20 A. Yes, sir.

21 Q. All right. So, some of the things that you're  
22 testifying here today is based on your knowledge of what  
23 you knew of MS-13 ten years ago, right?

24 A. Yes, sir.

25 Q. Right.

1           Let me ask you about one thing that you were  
2 talking about, going back to the rules. And I apologize  
3 to be going back and forth with you, Mr. Fuentes, but,  
4 one thing caught my attention. You said that you can  
5 get a green light for breaking small rules. Is that  
6 what you meant?

7           A. Yes, sir.

8           Q. Small rules.

9           A. If you keep repeating, breaking small rules,  
10 eventually they will green light you. It will be easier  
11 for them than be dealing with you for a -- with the  
12 petty stuff you doing.

13          Q. Okay. So then, a *calentón*, what you said it was  
14 a beat down, right?

15          A. Right.

16          Q. And a green light can be used for the same kind  
17 of offenses?

18          A. Well, a *calentón* is when you readily break a  
19 small rule. But if you keep breaking the small rule  
20 over and over and over, of course, they're going to --  
21 it's going to be easy for them to get rid of you.

22          Q. So, my question again is, that a green light is  
23 not only reserved for the serious charges, it can also  
24 be a small charge, a small offense?

25          A. Yes, sir.

1 Q. And a *calentón* can also be for a small offense?

2 A. Yes, sir.

3 Q. And a *calentón* can also be for a serious offense,  
4 right?

5 A. Nah.

6 Q. Nah.

7 So, let's assume that you're the -- you're the  
8 money man for your particular clique. You're making the  
9 clique money, and you commit a big offense, not  
10 snitching, okay, but you commit a big offense.

11 You're telling me that the clique is ready to  
12 kill you, even though you're the money man for the  
13 clique? Or they're going to give you a *calentón*?

14 A. Nah, they're going to kill you, because there's  
15 always somebody in line to -- to take over the spot.

16 Q. You also mentioned these green light meetings.  
17 And your testimony here today was, is that everyone is  
18 there?

19 A. Yes, sir.

20 Q. All right. So, it's not that it's reserved for a  
21 first *palabra* or the first word or the second word?

22 A. When I say "everyone is," I'm talking about every  
23 clique.

24 Q. Okay. So you're not saying that everyone in the  
25 clique is involved in this meeting where there's a



1 discussion of who's going to be green-lighted?

2 A. No, just the first and second.

3 Q. The first and the second word?

4 A. Yes, sir.

5 Q. Okay.

6 Now, let's talk about the murder that you were  
7 involved in, you and Seco, right? So your testimony is,  
8 is that you were told that you had to kill a *chavala*,  
9 right?

10 A. Yes, sir.

11 Q. Right. And the reason why you had to kill a  
12 *chavala* was because of this altercation that you had  
13 with some MS-13 members in Maryland, right?

14 A. Yes, sir.

15 Q. All right. And so the altercation that you had  
16 in Maryland with MS-13 members resulted in you being  
17 stabbed 16 times?

18 A. Yes, sir.

19 Q. I'm assuming you were running your mouth at this  
20 party. Is that what happened?

21 A. No, sir.

22 Q. No.

23 A. It was the other guy.

24 Q. It was the other -- so the other guy was at  
25 fault?

1           A.    Was -- was disrespecting me, and I called him out  
2   and, you know, they -- they begun to beating me up, and  
3   then once they stopped, then I left, I decided to left.

4           Q.    But isn't that a violation of MS-13, beating up  
5   another homeboy like that?

6                   It isn't, isn't it?

7           A.    It is.

8           Q.    Okay. So, you are the victim of a nonauthorized  
9   beat down by homeboys --

10          A.    Right.

11          Q.    -- right?

12                   And, the way you are telling Judge Lee and this  
13   jury, all of us, is the way that MS-13 resolved it was  
14   that you had to go out and kill somebody.

15          A.    Well --

16          Q.    That's what your story is, right?

17          A.    Right.

18          Q.    Okay.

19          A.    Well, the reason for that was because once I left  
20   the party, one of them said that I would -- I swung a  
21   knife at him, and they gave that reason in the meeting.  
22   That was their story, for they to come up clean.

23          Q.    Buso, your name is -- you're Mr. ready for  
24   anything, right?

25          A.    Right.

1 Q. And you're not going to let somebody disrespect  
2 you.

3 A. Right.

4 Q. Right?

5 So, at that party, you were drinking?

6 A. Yes, I was.

7 Q. All right. You were getting high?

8 A. Drinking.

9 Q. Probably running your mouth?

10 A. No, sir.

11 Q. Oh, no?

12 A. No.

13 Q. Let's talk about this tattoo that's on your  
14 forehead. MS has rules about what kind of tattoos you  
15 can get, right?

16 A. Right.

17 Q. And, where on your body you can get them?

18 A. Right.

19 Q. Because, certain tattoos have to be earned?

20 A. Right.

21 Q. And, the tattoo that you have on your forehead is  
22 pretty prevalent and obvious to anyone, right?

23 A. Yes.

24 Q. Right.

25 So, it holds special status within MS-13, does it

1 not?

2 A. Excuse me?

3 Q. It holds a special status, right?

4 A. Right.

5 Q. Right?

6 Not any homeboy can just go out there and get the  
7 M and the S put on their forehead, can they?

8 A. No, sir.

9 Q. And if any homeboy goes out and gets the M and  
10 the S on their forehead, they can get in trouble for  
11 that, right?

12 A. But at that time, they knew --

13 Q. My question is: Can they get in trouble for  
14 that?

15 A. Okay. Yes, sir.

16 Q. Okay. All right. And, based on your testimony,  
17 you did not ask permission to get the M and the S on  
18 your forehead?

19 A. No, sir.

20 Q. You said that you just went out one day and got  
21 drunk, and got this M and S on your forehead?

22 A. Yes, sir.

23 Q. And you would agree with me that having an M and  
24 S on the forehead is reserved for only the special  
25 homeboys who did something special for the Mara?

1 A. Yes, sir.

2 Q. Something special like murdering somebody, right?

3 A. Yes, sir.

4 Q. And, did you tell the government who you murdered  
5 in order to get that M and that S on your forehead?

6 A. I didn't murder anybody.

7 Q. Well, you're still sticking to your story that  
8 you just got drunk and you got the M and the S on your  
9 forehead?

10 A. Yes, sir.

11 Q. So, as a result of this misunderstanding between  
12 you and your homeboys up in Maryland, your testimony  
13 today, and I'm assuming in the other court cases, has  
14 been that to make things good, you had to kill a  
15 *chavala*, right?

16 A. Yes, sir.

17 Q. Not that you would get a beat down for what you  
18 did -- you and that homeboy did in Maryland?

19 A. Yes.

20 Q. Not that you would get green lighted for breaking  
21 one of the rules of MS-13?

22 A. No.

23 Q. So, then, after you're given this assignment,  
24 this mission as you called it, then, it sounds like for  
25 some time you were on the hunt, you were on the prowl

1 for some chavalas?

2 A. Yes, sir.

3 Q. And again, a *chavala* is a rival gang member,  
4 right?

5 A. Yes.

6 Q. And, I'm assuming -- and you correct me if I'm  
7 wrong. I'm assuming that the reason why you were tasked  
8 with hunting down a *chavala* is because there's some  
9 honor in killing your enemy, right?

10 A. Yes, sir.

11 Q. All right. There's no fun in just walking up to  
12 a normal civilian and shooting a civilian, right?

13 Anyone can do that.

14 A. Not just any civilian.

15 Q. That's what I'm saying. The reason why you were  
16 tasked with killing a *chavala* is because a *chavala* is in  
17 the game, right?

18 A. Yes.

19 Q. A *chavala* is a gang member?

20 A. Yes.

21 Q. A *chavala* knows that if I see you, and you're  
22 coming at me, I'm going to fight you. I'm going to  
23 square up with you. I'm going to fight you and I may  
24 kill you.

25 A. Yes.

1 Q. All right. So that's part of the challenge about  
2 when you have to go and find a *chavala* --

3 A. Yes.

4 Q. -- is that you're hunting someone who is just as  
5 dangerous as you?

6 A. Yes.

7 Q. So, then, you testified that you were looking for  
8 some chavalas, and you were at a -- a party, right?

9 A. Yes.

10 Q. Is that correct?

11 A. Yes.

12 Q. All right. And, before you go to the party, you  
13 get a gun?

14 A. Yes, sir.

15 Q. And when you get to this party, you do see a  
16 group of chavalas, these 18th Street guys. Did you know  
17 they were 18th Street or did you just assume they were  
18 *chavalas*?

19 A. No. When I got to this party, like I say, Sparky  
20 was pointing at some *chavala*, but there was a lot of  
21 people walking on the sidewalk. I couldn't see who he  
22 was pointing at.

23 That's when this car pulled over with these other  
24 guys, and the guy on the passenger side had his head  
25 stick out, cursing me.

1 Q. What was he saying to you?

2 A. He was telling me, "motherfuckers," and, you  
3 know, all kind of bad words, because, the way I was  
4 dressing.

5 And then when I look at him, that's when I  
6 noticed that he had that red bandana across his  
7 forehead.

8 Q. How were you dressed?

9 A. Like we usually do, with baggy pants, call them  
10 bandalos, and very baggy clothes.

11 Q. All right. But you were in the car, so he  
12 couldn't see your pants, could he?

13 A. Who?

14 Q. This guy who was yelling very bad things to you.

15 A. He was right there, like in front of me. He was  
16 like talking directly to me.

17 Q. So you were standing outside?

18 A. Yes.

19 Q. Okay. You were standing outside.

20 And, this -- let's go back a little.

21 So you see this group who you believe is  
22 chavalas, and there were a lot of people there, right?

23 A. They were in a car.

24 Q. Okay. I'm confused. Were there chavalas in the  
25 car or were they out the car, or were there some in the



1 car or out the car?

2 A. I say in the car.

3 Q. In the car?

4 A. Yes, sir.

5 Q. And, you're just standing there, and then they  
6 drive by, and they say something to you?

7 A. Yes, sir. They --

8 Q. And they tell you that they're 18th Street?

9 A. They didn't. Because they was cursing me, and  
10 when I look at them, and he had that bandana across his  
11 forehead, I noticed right away that he must be a  
12 *chavala*. So I -- that's when I shout out, "La Mara,"  
13 and I begun to shoot at him.

14 Q. And, you missed, and so your mission was  
15 unaccomplished, and you had to go out looking for some  
16 more -- some other chavalas, right?

17 A. Yes, sir.

18 Q. All right. So, let's talk about the murder that  
19 you were -- you were involved in. So, you say that you  
20 were at a homeboy's home, who lived in a town home in  
21 Herndon; is that correct?

22 A. Yes.

23 Q. All right. And what time of day was it,  
24 Mr. Fuentes?

25 A. It was -- I can't recall really the time, but it

1 was light and dark, like light was fading away.

2 Q. It was like 4:00 o'clock, 5:00 o'clock?

3 A. I would say more like 6:00 and a half, 7:00.

4 Q. And, you said that you saw -- well, you never  
5 described this person who you saw, this male that you  
6 saw. He was a kid, right?

7 A. He was a boy, but I don't -- he looked like he  
8 was like, 18.

9 Q. All right. But since then, you found out what  
10 his true age was, right?

11 A. What do you mean?

12 Q. I mean, now, sitting here today, you know how old  
13 he was, right?

14 A. No. I -- I'm assuming that that's -- that's  
15 what -- how old he was.

16 Q. You mean to tell me that after all your court  
17 proceedings when you pled guilty to murder, you don't  
18 know how old the victim was?

19 MR. TOBLER: Objection, Your Honor. Asked  
20 and answered.

21 MR. LEIVA: I don't think he did, Your  
22 Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Say that again.

25 BY MR. LEIVA:

1 Q. How old was the victim of the murder that you  
2 were involved in?

3 A. I say, it's maybe 18 years old.

4 Q. So, what I'm asking you is, you never found out;  
5 is that what you're telling us? You never bothered --

6 A. I don't remember, sir.

7 Q. You never were told that he was 16 years old, 16  
8 or 17 years old?

9 A. I might. I don't remember.

10 Q. You don't remember.

11 I guess it didn't matter to you, right? It  
12 didn't matter how old he was.

13 MR. TOBLER: Objection, Your Honor.  
14 Argumentative.

15 THE COURT: Sustained.

16 BY MR. LEIVA:

17 Q. And he was with a young girl, right?

18 A. Yes.

19 Q. All right. A little girl, someone under the age  
20 of 18.

21 A. I guess, I don't know.

22 Q. And, was he holding a bike as he was walking?

23 A. Holding a bike?

24 Q. Was he on a bike, holding a bike?

25 A. No. I was on a bike.

1 Q. You were on a bike?

2 A. Yes.

3 Q. All right. And this area where you ran into this  
4 kid and his sister, was it a park? Was it a path? Was  
5 it a bike path? Was it a running trail?

6 What was it?

7 A. Street, regular street.

8 Q. It was a regular street.

9 And, when you first saw him, you saw him walking  
10 with this young girl, right?

11 A. Yes.

12 Q. All right. And then, what? You ran up to him,  
13 you called him?

14 What did you do?

15 A. I stopped right in front of him and I told him  
16 that I was an 18th Street, that I just had moved over  
17 there and that I was looking for homies to kick it.

18 Q. But your experience, Mr. Fuentes, with any  
19 *chavala* rival gang member, is that they're not going to  
20 offer up who they belong to just because someone asked.  
21 That's why you have secret hand shakes, that's why you  
22 have signs, right?

23 A. Well, I got to make sure he was an 18th Street.

24 Q. Yeah, but what I'm getting at, if he's 18th  
25 Street, he's that foolish enough, that just some

1 stranger coming up on the street, said, "Hey, are you  
2 18th Street," you want us to believe that he responded,  
3 "Yeah, I'm 18th Street"?

4 A. Well, because, some of them tend to deny -- some  
5 of them tend to get scared and denial when they really  
6 are.

7 Q. But what you're telling me --

8 A. That's why I decided to approach it that way, to  
9 make sure he was an 18th Street.

10 Q. You were dressed in baggy clothes, right?

11 A. Yeah.

12 Q. So the same kind of style of clothing that you  
13 wore that day when this young kid was shot, is the same  
14 kind of style of clothing you wore when these people at  
15 this party spotted you and knew that you were MS-13,  
16 right?

17 A. Yes, sir.

18 Q. Because you dress that way, right?

19 A. Yes, sir.

20 Q. You represented that you're a Mara, right?

21 A. Yes, sir.

22 Q. And you got this big thing on your forehead  
23 saying that you're MS?

24 A. Yes, sir.

25 Q. And you want Judge Lee, you want us, you want the

1 jury to believe that you are dressed like an MS-13 gang  
2 banger, you've got this thing on your forehead, you walk  
3 up to this kid and you say, "Hey, are you 18th Street,"  
4 and this kid sees you and says, "You know what? Yes, I  
5 am 18th Street," to an MS-13 member?

6 A. I was wearing a visor during that time, sir.  
7 None of my tattoo were visible.

8 Q. That's what you're saying.

9 If the government wants to believe that, they can  
10 believe that.

11 A. If you don't want to believe it, it's up to you.  
12 I can't make you believe it, sir.

13 Q. And --

14 A. I'm just answering you what -- what it is.

15 Q. Right.

16 A. I can't go around telling you something that is  
17 not.

18 Q. And here -- and please don't be offended to my  
19 question, but you --

20 A. I'm not, sir.

21 Q. -- you have a rather large forehead, right?  
22 You've been told that before?

23 A. Say what?

24 Q. Your forehead is rather large, right?

25 Your boys have made fun of you because of your

1 forehead.

2 MR. TOBLER: Objection, Your Honor.

3 Relevance.

4 THE WITNESS: What relevance has that?

5 THE COURT: Sustained.

6 BY MR. LEIVA:

7 Q. And so, you're telling us that you somehow found  
8 this cap or this visor that covered those enormous MS  
9 letters on your forehead, that are right above your  
10 eyebrow.

11 A. Yes, it did.

12 Q. And the cap that -- or visor that you were  
13 wearing, they were MS-13 color, right?

14 A. It was a white visor.

15 Q. And you had MS-13 colors on you?

16 A. Yes, sir.

17 Q. And again, your testimony is that this 18th  
18 Streeter sees a guy approaching him -- and it was you  
19 and Seco, right?

20 A. Yes, sir.

21 Q. And Seco was also dressed like a homeboy, wasn't  
22 he?

23 A. Yes.

24 Q. He was dressed in the MS-13 colors, right?

25 A. Yes, sir.

1 Q. All right. So, this 18th Streeter -- well, let  
2 me go back.

3 Have you found out who this young girl was that  
4 was with him?

5 Has anyone ever told you that?

6 A. I don't recall, sir.

7 Q. You don't recalled being told it was his young  
8 sister?

9 A. I don't recall.

10 Q. So, let's go back, then. So, this young kid with  
11 this -- with this young girl, sees two guys dressed in  
12 MS-13 gear, approach them, and your testimony to us is  
13 that he just openly said, "Yes, I'm 18th Street."

14 A. Yes, sir.

15 Q. Okay. And, he did -- he did this knowing that  
16 once he divulged to you that he was 18th Street, he  
17 would either be beaten or killed, right?

18 A. I think he believed me, sir. Because he say that  
19 right away, that he was an 18th Street.

20 Q. And I understand. I apologize if I confused you.

21 And, given the gang culture -- and the gang  
22 culture is not that different between 18th Street and  
23 MS-13, would you agree with that?

24 A. Yeah.

25 Q. All right. And for the most part, 18th Street



1 members and MS-13 Street (sic) members are Salvadorian?  
2 Not all of them; for the most part?

3 A. Most of them, not all of them.

4 Q. All right. So, what my question to you was --  
5 and I apologize if I confused you -- was that you're  
6 telling us that this 18th Street member, who you say was  
7 18th Street, sees two men approach him wearing MS-13  
8 colors, and he tells you that he's MS-13 (sic) and  
9 responds to your question, knowing that once he divulged  
10 to you that he was 18th Street, that you guys were  
11 either going to kill him or beat him, right?

12 Because that's what you guys do to each other,  
13 right?

14 A. Right.

15 Q. And he had no backup, right?

16 He had no one around him to back him up. It was  
17 him against you.

18 A. He never thought that we were MS. That's why.

19 Q. Hold on.

20 A. In his mind --

21 Q. You guys are trained to spot *chavalas*, right,  
22 based on the colors?

23 A. Right.

24 Q. And, the 18th Street gang members are trained to  
25 spot you guys, based on your colors?

1 A. I was not an 18th Street member, sir.

2 Q. But that's why you wear your colors, right, so  
3 people can know that you're a member of the Mara, that  
4 you're an MS-13 member?

5 A. We do, because we're not afraid to represent.  
6 But I can't speak on behalf of the other gang.

7 Q. All right. So, let me go back to my question.  
8 And so, he didn't have anyone around him to back him up.  
9 It was just his -- that girl who was with him?

10 A. No.

11 Q. And, of course, once Seco shot him, right, he  
12 then turns around and shoots the girl?

13 A. That's what he told me when we got to the house.

14 Q. But you were there, weren't you?

15 A. Yes.

16 Q. Right?

17 A. I was focusing on the -- on the guy.

18 Q. And, you were going to take credit for it, right?

19 You were going to go back to your homeboys and  
20 say, "Hey, mission accomplished. We got a *chavala*.  
21 Maybe we even got two *chavalas*."

22 A. I wasn't going to get anything, because it wasn't  
23 me who shot it, but --

24 Q. Yeah, but that's what you were hoping for, right?

25 A. Yes.

1 Q. Right?

2 A. Yes, but, the mission was for me to kill a  
3 *chavala*, not somebody else to kill it for me.

4 Q. Yeah, but, you just said that that's what you  
5 were hoping for, you were going to get credit for that  
6 killing, right?

7 A. Not for the mission. You still going to get  
8 credit for it, but not for the --

9 Q. You're still going to get credit for it.  
10 So you can go back to your homeboys and say,  
11 "Hey, I participated in the murder of a *chavala*" --

12 A. Right.

13 Q. -- and your reputation would rise even further,  
14 right?

15 A. Right.

16 Q. Because, if you told them the truth, which is,  
17 "You know what? Me and my homeboy just rolled up on a  
18 16-year-old boy and his little sister and shot them,"  
19 you wouldn't be getting the credit, right?

20 You wouldn't get any credit for that.

21 A. If the -- if the guy was a *chavala*, yeah.

22 Q. No. I'm saying if the truth was that he was not  
23 a *chavala* --

24 A. All right.

25 Q. -- and that you just rolled up on some young kid

1 and his sister walking, you wouldn't get any credit for  
2 that.

3 A. You still would get a credit for it. You still  
4 get a respect.

5 Q. You get respect from the Mara for shooting a  
6 young kid and his sister; that's what you're telling us?

7 A. Yes, sir. That's how savage, unfortunately, we  
8 were.

9 Q. But that's not what you were hoping for. You  
10 threw out -- you were -- you made up this whole story  
11 about this young man just opening up to you and telling  
12 you that he's 18th Street, because you wanted the  
13 credit, because you wanted the mission accomplished, and  
14 you wanted your reputation within the Mara to rise.

15 A. Yeah, but my mission wasn't going to be completed  
16 because I was not the guy who had the gun.

17 Q. And, of course, since you've gone through these  
18 court proceedings, you've since found out that that  
19 young man was not 18th Street, right?

20 A. I don't know if he was. He told me he was, but,  
21 I don't know if they --

22 Q. So --

23 A. -- if he was or not. I'm just tell you what he  
24 told me.

25 Q. So, through all these court proceedings that

1 you've testified to, all these meetings with FBI agents,  
2 all these meetings with these assistant U.S.  
3 attorneys -- not these, but others as well -- no one  
4 ever sat you down and told you how old these victims  
5 were, no one ever told you whether they were 18th Street  
6 or not. That's what you're telling us, right?

7 You're still as clueless today as when you shot  
8 that kid -- or participated in that murder some years  
9 ago.

10 A. I told you before, sir, I don't remember.

11 Q. Let me go back and ask you a question about a  
12 tattoo. What does a teardrop tattoo signify within  
13 MS-13?

14 A. If you had a full tattoo, a teardrop, it means  
15 you had killed somebody. And if it's not -- and if it's  
16 only line -- line without filling inside, means that you  
17 had lost somebody --

18 MR. LEIVA: That's all the questions --

19 THE WITNESS: -- a loved one.

20 MR. LEIVA: That's all the questions I have,  
21 Your Honor.

22 THE COURT: Say your name.

23 CROSS-EXAMINATION

24 BY MS. AUSTIN:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. My name is Amy Austin and I represent  
3 Mr. Gaitan Benitez.

4 Mr. Fuentes, I'm going to have to go back to the  
5 tattoo and talk a little bit about that. Do you  
6 remember what year it was when you got the MS tattooed  
7 on your forehead?

8 A. 2003.

9 Q. And, you said you got drunk one night and got  
10 that tattoo; is that correct?

11 A. Yes.

12 Q. After you woke up the next morning and realized  
13 you had that tattoo on your forehead -- what did your  
14 fellow homeboys say when they saw you?

15 A. Well, they were -- they were kind of mad. But at  
16 that time, we just had barely fixed the problem between  
17 us and -- between me and the Sailors clique, so they  
18 kind of left it like that, because they knew that I was  
19 going to carry this mission anyway, and, that's going to  
20 make up for it.

21 Q. So, you got that tattoo right after you had that  
22 problem with the Sailors clique?

23 A. Yes.

24 Q. After you were stabbed several times?

25 A. Yes, ma'am.

1 Q. And so, you -- you endured quite a violent attack  
2 when you were attacked by the Sailors clique, right?

3 A. Yes, ma'am.

4 Q. And -- and you lived through that, even though  
5 you were stabbed 16 times. Did that earn you respect  
6 among the gang members?

7 A. It did.

8 Q. And so, they let you keep that tattoo?

9 A. Not because of that. It was because, like I say,  
10 we just had finished fixing this problem between us and,  
11 um, we didn't want to start another war among us. And  
12 they knew that I was going to carry this mission to kill  
13 a *chavala*, and that was going to cover for that.

14 Q. So -- so, was your mission to kill a *chavala*  
15 based not only on this incident with the Sailors, but  
16 because you got the MS tattooed on your forehead?

17 A. No, just to kill a *chavala* for the incident.

18 Q. And, they were just going to overlook the fact  
19 that you got that MS tattooed on your head, that's  
20 usually reserved for those who kill someone?

21 A. Right. But like I say before, you know, I was  
22 going to have to carry this mission to, and they kind of  
23 let it slide like that.

24 Q. Now, I think you testified -- I'm not sure if it  
25 was either on direct or during the cross-examination --

1 that MS-13 thrives on violence, is what you said; is  
2 that correct?

3 A. Right.

4 Q. And that -- you talked about how respect is  
5 important in MS-13.

6 A. Yes, ma'am.

7 Q. And so, when -- you also stated that when members  
8 of MS-13 are talking, if they're drinking or -- or not  
9 drinking, but talking about things they've done in the  
10 past, maybe murders they've committed or other crimes  
11 they've committed, I think you said you take them at  
12 their word, that if they say they did it, you believe  
13 they did it.

14 A. Yeah.

15 Q. And, because you -- somebody tells you something,  
16 that they killed somebody, you believe it, and in the  
17 gang world their status goes up just a little bit,  
18 doesn't it?

19 A. Well, you know, eventually we will find out if  
20 he's telling the truth or not.

21 Q. What if it was something that happened in El  
22 Salvador before they came to the United States?

23 A. Like I say, we will find out. We -- this gang  
24 communicates throughout this country and other countries  
25 outside this country. It's nothing you can say within



1 this gang that --

2 Q. Do you have fact checkers in MS-13, that go out  
3 and interview people to see if crimes were committed two  
4 and three years ago?

5 A. We communicate to each other.

6 Q. Right. You communicate via telephone?

7 A. Yes, ma'am.

8 Q. And -- but, you just stated that if somebody  
9 tells you something, you assume it's true?

10 A. Yes, I mean, because who am I to tell them right  
11 there, "Hey, you lying"? I don't know at that moment.  
12 That's why we -- we have to find out. And once we find  
13 out, hey, this guy is telling the truth, yeah.

14 Q. When all the homeboys get together, not for the  
15 general meetings when just the runners are around, but  
16 the other clique meetings --

17 A. Okay.

18 Q. -- is there a lot of talk, or is it all business?

19 A. Nah; it is all business.

20 Q. About the money and the --

21 A. And about what's going on throughout the gang,  
22 who needs to be -- who is admitted, who hasn't been  
23 showed up, who hasn't bring the money, who -- or who had  
24 been arrested, who needs to be sent the money to jail,  
25 things like that.

1 Q. When you were in MS-13 -- and I think the last  
2 time you were an active member was in 2005; is that  
3 correct?

4 A. Yes, ma'am.

5 Q. Did everybody have cellphones?

6 A. Not really at that time, no.

7 Q. So, homeboys weren't calling each other five  
8 times a day, talking about this, that?

9 A. Um -- well, usually the first word and the second  
10 word, they -- they did have --

11 Q. They had the phones?

12 A. Yes.

13 Q. But all the homeboys didn't have them?

14 A. But it didn't take a -- once a -- there was  
15 anything that we need to gather to or let anybody know  
16 about it, we just call one person. That's it. And,  
17 that person will let know the -- his people.

18 Q. Now, let me go to 2004, when you and Seco were  
19 involved in the murder of the person you said you  
20 thought was the 18th Street gang member.

21 After that murder occurred, you said you got in  
22 your car and you went back to your house; is that  
23 correct?

24 A. No. We were --

25 Q. I'm sorry, you were on bikes. Where did you go

1 after that -- after the shooting?

2 A. We went to dump the bikes and hid the gun, and  
3 then we went to my house.

4 Q. And then, when you -- how long did you stay at  
5 your house?

6 A. We spend the night over there in my house.

7 Q. Were you and Seco together?

8 A. Yes, ma'am.

9 Q. Okay. And then after you spent the night at your  
10 house, what did you do?

11 A. Well, that's when we left. The next day we went  
12 to stay with a homie in Fredericksburg.

13 Q. So you left the area?

14 A. Yes, ma'am.

15 Q. And, this homie in Fredericksburg, was he in your  
16 clique?

17 A. Yes, ma'am.

18 Q. And how long did you stay -- before you left --  
19 no, I'll withdraw that.

20 How long did you stay with the homeboy or homie  
21 in Fredericksburg?

22 A. A week.

23 Q. And after that week there, what happened?  
24 Where did you go?

25 A. We left. We went to Tennessee.

1 Q. Who did you stay with in Tennessee?

2 A. With Seco's cousin.

3 Q. Seco's cousin?

4 A. Yes, ma'am.

5 Q. And the fact that -- well, how long did you stay  
6 in Tennessee?

7 A. A week, too.

8 Q. And, was Seco's cousin in the gang?

9 A. No, he was not.

10 Q. And, after you stayed in Tennessee, did you go  
11 somewhere else?

12 A. And while we were staying in there, we got this  
13 job, moves around a lot, so we end up in North Carolina.

14 Q. Okay. And how long were you in North Carolina?

15 A. A week.

16 Q. And, are you and Seco still together?

17 A. Yes, ma'am.

18 Q. Okay. And, after you stayed a week in North  
19 Carolina, where did you go?

20 A. That's when we decided to go to Los Angeles.

21 Q. To California?

22 A. Yes.

23 Q. So, you quit your jobs and you went to  
24 California?

25 A. Yes, ma'am.

1 Q. How did you get there?

2 A. By land.

3 Q. Car?

4 A. Yes.

5 Q. Who drove you?

6 A. We -- our homies connected us with this company  
7 that travel around the world, picking up here and there,  
8 and that's how we end up going over there.

9 Q. And who did you stay with in California?

10 A. We stayed in a hotel over there, waiting for this  
11 leader of MS in Los Angeles. We waited for him to come  
12 pick us up.

13 Q. So, you were in contact with gang members in  
14 California?

15 A. Yes, ma'am.

16 Q. And did that gang member come pick you up?

17 A. No, because the police came and got us.

18 Q. You were arrested?

19 A. Yes.

20 Q. And brought back to Virginia?

21 A. Yes, ma'am.

22 Q. Did you get in trouble with the gang for taking  
23 off after shooting -- you and Seco being involved in the  
24 shooting?

25 A. With the gang?

1 Q. Yes.

2 A. No. They were helping us, as a matter of fact,  
3 to get away.

4 Q. Okay. What is your release date, Mr. Fuentes,  
5 from the Bureau of Prisons?

6 A. I'm afraid I can't answer you that, due to the  
7 fact that I am afraid that these guys will know and they  
8 put -- might put the word out that I am about to go  
9 home. But I still doing time.

10 Q. You're still doing time?

11 A. Yes, ma'am.

12 Q. You said you can't leave the gang; is that  
13 correct?

14 A. Yeah. Once you're in the gang, you can't leave.

15 Q. And, there aren't any exceptions?

16 A. Not really, I mean, unless you become a snitch,  
17 like I am right now. I'm glad that --

18 Q. So -- now, if tattoos as part of MS-13 gang  
19 culture go out of style, so to speak, let's assume, and,  
20 you know, you haven't been an active gang member for a  
21 while -- but let's assume for now MS-13 members don't  
22 get tattoos, such as the one you have --

23 A. Right.

24 Q. -- because they don't want it to be so evident to  
25 police that they're members.

1           The only way they can relate to people in the  
2 gang that they may have done something violent or to  
3 boast would be to tell the story; isn't that correct?

4           A.   Yes, ma'am, but -- you're assuming -- I assume  
5 that there had to be someone with them to corroborate  
6 the story.

7           Q.   Maybe they all corroborate a story.

8           A.   Well --

9           Q.   But that "MS" was an indication that you had been  
10 involved in something violent, correct?

11          A.   Right.

12          Q.   And, if you're not allowed to get those tattoos  
13 any more, word of mouth is really the only way you can  
14 spread around the fact that you've been involved in  
15 something, by telling the story. You can't plaster it  
16 on your body any more.

17          A.   Right. But like I said, since you're assuming, I  
18 assume that somebody had to be there to tell -- to tell  
19 the -- to back him up and say, "Yes, he did," or, "I was  
20 there."

21          Q.   You assume they're telling the truth?

22          A.   Right.

23                   MS. AUSTIN: Thank you.

24                           CROSS-EXAMINATION

25                   BY MR. CRAWLEY:

1 Q. I think it's almost afternoon, but I'm going to  
2 say good morning -- well, good afternoon. I'm sorry.

3 A. Good afternoon.

4 Q. How do you pronounce your last name?  
5 Is it Alfaro?

6 A. Yes, sir.

7 Q. Mr. Alfaro, back to that incident concerning you  
8 and the other gang -- the other MS clique, the incident  
9 you talked about where there was an altercation. You  
10 recall that?

11 A. Oh, yeah. Yeah.

12 Q. I think --

13 A. Involved with the Sailors.

14 Q. The Sailors.

15 A. Okay. Yes.

16 Q. Okay. So, in that particular incident, is it my  
17 understanding that the gentleman from the Sailors  
18 indicated that you had pulled a knife on him?

19 That's what he said?

20 A. Yes.

21 Q. You don't agree with that, correct?

22 A. Nah. I had a knife on me, but, it's the story in  
23 a general meeting.

24 Q. Well, I don't want to hear the whole story. I  
25 just want to know: Did you pull a knife on him?



1 A. No, I didn't.

2 Q. You did not pull a knife?

3 A. No.

4 Q. Okay. So it's fair to say that MS-13 is a  
5 family, correct?

6 It's a brotherhood. Is that a safe statement?

7 Like, MS-13, as Mara, that's a brotherhood of  
8 individuals, correct?

9 A. Right.

10 Q. Okay. And, by your own testimony, on this  
11 particular night there was a -- a problem between you  
12 and one of your brothers, correct?

13 Because the Sailor indicated that you had pulled  
14 a knife on him, correct?

15 A. Yeah, but we also got a --

16 Q. It's just --

17 A. -- got a war between us.

18 Q. -- a yes or no question.

19 A. Sir, I can't answer a --

20 Q. Okay. Let me rephrase. Maybe I didn't do a good  
21 job.

22 So, you admit that this is a brotherhood. You  
23 acknowledge that.

24 A. Yes, sir.

25 Q. And you admit that on this particular night, you

1 had an altercation, allegedly, with one of your  
2 brothers, correct?

3 A. With his clique, yes.

4 Q. Correct.

5 And, you admit that this gentleman told a story  
6 that was not true. He told a lie, correct?

7 A. We also go to war together among the cliques,  
8 sir, so --

9 Q. I didn't ask you what you had to do together  
10 after the fact. I'm asking you, as it relates to what  
11 he said about the incident, he said something that you  
12 said wasn't true, correct?

13 A. Well, that was his story.

14 Q. I know. But you didn't agree with that story,  
15 correct?

16 A. Because it wasn't true.

17 Q. Exactly.

18 So, you, by your own statement -- well, let me  
19 put it this way: Pulling a knife on someone is a very  
20 dangerous act, correct?

21 A. Right. We're not allowed to do that in the gang.

22 Q. Exactly.

23 And pulling a knife on someone, if you're going  
24 to do it, you probably should have the intent to do  
25 bodily harm to that individual, correct?

1           A. We don't do it because we already know that we  
2 shouldn't be doing that to another homie.

3           Q. I understand.

4                     Knives cause serious injuries, correct?

5           A. Yes.

6           Q. Okay. And knives can be used to commit murder,  
7 correct?

8           A. Yes.

9           Q. And pulling a knife on someone would be  
10 consistent with the intent to cause serious injury to  
11 that person, correct?

12          A. It is. But it's also that -- it's also about  
13 the --

14                     MR. CRAWLEY: Your Honor --

15                     THE WITNESS: -- the respect --

16                     MR. CRAWLEY: Your Honor --

17                     MR. TOBLER: Objection, Your Honor. He  
18 should be allowed to answer the question.

19                     THE WITNESS: Yes, sir. Are you going to  
20 let me answer the question or --

21                     THE COURT: Just a second.

22                     If the question asks for a yes or no, you  
23 have to answer yes or no.

24                     THE WITNESS: Okay. I'm sorry.

25                     THE COURT: The other lawyer will give you a

1 chance to answer the question.

2 THE WITNESS: I'm sorry.

3 THE COURT: Just focus on the question, if  
4 you would.

5 BY MR. CRAWLEY:

6 Q. So you would agree with my statement that it's  
7 consistent with intending to cause serious bodily harm  
8 to someone, correct?

9 A. Yes, sir.

10 Q. Okay. So, in your statement, you've admitted,  
11 under oath, that this individual that's in your  
12 brotherhood lied on you about pulling a knife, correct?

13 A. Yes, sir.

14 Q. And, he did that to other gang members. He told  
15 other gang members a lie about you, correct?

16 A. Yes, sir.

17 MR. CRAWLEY: No further questions.

18 CROSS-EXAMINATION

19 BY MR. SALVATO:

20 Q. Good afternoon, sir. My name is Frank Salvato  
21 and I represent Christian Lemus Cerna.

22 A. Good afternoon, sir.

23 Q. Sir, you received a life sentence from Judge  
24 Ellis, correct?

25 A. Yes, sir.

1 Q. And when did you receive that life sentence?

2 A. By the end of 2005.

3 Q. And then you've received a reduction in your  
4 sentence, true?

5 A. Yes.

6 Q. When did you receive the reduction in your  
7 sentence?

8 A. 2011.

9 Q. And, in 2011, Judge Ellis reduced your sentence  
10 from life in prison -- and there's no parole, right?

11 A. Yes.

12 Q. You were facing life in prison without parole,  
13 true?

14 A. Yes, sir.

15 Q. And, Judge Ellis reduced your sentence from life  
16 without parole to 15 years; is that true?

17 A. Yes, sir.

18 Q. And he did that pursuant to what's called a Rule  
19 35?

20 A. Yes, sir.

21 Q. And you understand what a Rule 35 is?

22 A. Yes, sir.

23 Q. Okay. And a Rule 35, sir, is the government's  
24 motion to reduce your sentence, correct?

25 A. Yes, sir.

1 Q. And, without the government's motion to bring  
2 it -- your case back before the Court, your sentence  
3 cannot be reduced, true?

4 A. Yes. But it was -- be up to the judge at the  
5 end.

6 Q. The government has to initiate or start the  
7 process --

8 A. Oh, yes, yes.

9 Q. The judge doesn't have the power on his own to  
10 reduce your sentence, true?

11 A. Right. That's correct.

12 Q. It is only if the government is satisfied with  
13 your cooperation, can they file a motion.

14 A. That's correct.

15 Q. Then it's up to the judge.

16 A. That's correct.

17 Q. And so without the government's motion and  
18 consent and their endorsement, you would be facing a  
19 life without parole sentence still, true?

20 A. Yes.

21 Q. And I think you said during your direct  
22 examination that it's your hope that the government will  
23 allow you to stay in the country, yes?

24 A. Yes.

25 Q. And, has anyone from the government -- that's not

1 part of your plea agreement, true?

2 A. Yes, it's not.

3 Q. All right. Has anyone from the government, the  
4 FBI, law enforcement, represented to you that they will  
5 help you with that endeavor, with that effort to stay in  
6 the country?

7 A. They haven't promised me anything.

8 Q. Has anyone offered to you that they would assist  
9 you in that effort?

10 A. Well, I was told that I would be put in this  
11 Witness Protection Program outside, but it's -- it will  
12 be up to the -- I got to be accepted in this witness  
13 protection. It's up to them to at the end.

14 Q. So, witness protection here in the United States?

15 A. Yes, sir.

16 Q. Okay. And who told you that they would assist in  
17 your efforts to stay in the United States in the Witness  
18 Protection Program?

19 A. The government would recommend that.

20 Q. Okay. Who in the government told you that?

21 A. I don't remember if it was -- -- they never  
22 promised me anything. They will recommend it,  
23 Mr. Parker, Mr. Parker, Morris Parker.

24 Q. And he's the prosecutor in your case?

25 A. Yes.

1 Q. Right.

2 And, he was the one that prosecuted you for the  
3 RICO murder, true?

4 A. Yes.

5 Q. All right. And your representation is that the  
6 United States Attorney's Office, through Morris Parker,  
7 indicated to you that they would attempt to have you  
8 stay in the country, true?

9 A. Yes.

10 Q. And help you with your immigration status?

11 A. Yes.

12 Q. Sir, fair to say, once you're in the gang, you're  
13 in the gang, true?

14 A. Yes, sir.

15 Q. Homeboy once, homeboy forever?

16 A. Yes, sir.

17 Q. Okay. So your position in the gang is maintained  
18 as a homeboy once you're in the gang, true?

19 A. Yes, sir.

20 Q. Sir, is it fair to say that oftentimes MS-13  
21 members commit a crime that's not part of the gang,  
22 that's a personal crime?

23 A. Yes.

24 Q. So, somebody can go off and assault somebody  
25 personally, that's not part of MS-13, true?



1           A.    Yes.

2                   MR. SALVATO: That's all the questions I  
3 have, Your Honor.

4                   I do have one brief motion we can take up,  
5 either at the bench or at the break.

6                   THE COURT: At the break is fine. Thank  
7 you.

8                   Close enough. Ladies and gentlemen, we'll  
9 take the luncheon recess now.

10                   Please remember my instructions. Do not  
11 discuss the case. Don't permit the case to be discussed  
12 in your presence. Leave your notes in the jury  
13 deliberation room. Don't do any research on the case.

14                   And, of course, if you see individuals on  
15 the elevator and they don't speak to you, they're not  
16 being rude, it's only because they've been told not to  
17 do so.

18                   We will return at 2:00 o'clock. Thank you.  
19 You all can leave.

20                   We're going to stay in session.

21                   And the witness can go.

22                   (Jury not present.)

23                   THE COURT: You may be seated.

24                   You can step down, sir.

25                   (Thereupon, the witness withdrew from the

1 stand.)

2 MR. SALVATO: Court's indulgence.

3 THE COURT: All right.

4 MR. SALVATO: Your Honor, I don't want to  
5 hold everyone up. Let me talk to co-counsel about the  
6 propriety of the motion --

7 THE COURT: All right.

8 MR. SALVATO: -- and whether I should bring  
9 it up, and I'll let the Court staff know that.

10 THE COURT: Thank you.

11 We recess until 2:00 o'clock. Thank you  
12 very much.

13 Thereupon, court recessed at 1:00 p.m. and  
14 reconvened at 2:04 p.m.).

15 THE COURT: Ready to bring the jury out?

16 You can bring our jury out, Mr. Toliver.

17 (Jury present.)

18 THE COURT: You may be seated.

19 I'll have the witness brought out in just a  
20 second.

21 (Previous witness resumed stand.)

22 THE COURT: All right, Counsel. You may  
23 proceed.

24 MR. SALVATO: Thank you.

25

1  
2  
3           THEREUPON, OSMIN ALFARO FUENTES, previously  
4 sworn, resumed the stand and testified as follows:

5           FURTHER CROSS-EXAMINATION (Continued)

6 BY MR. SALVATO:

7           Q. Mr. Alfaro Fuentes, I just have a couple more  
8 questions for you.

9           A. All right.

10          Q. In 2008, you were in prison; is that correct?

11          A. Yes, sir.

12          Q. And, you received a discipline for -- while you  
13 were in prison for committing an assault without a  
14 serious injury; is that correct?

15          A. Yes, sir.

16          Q. And that was during an altercation with another  
17 inmate?

18          A. Yes, sir.

19          Q. Okay. And that other inmate suffered abrasions  
20 to the chest and back; is that correct?

21          A. Operations?

22          Q. Bruises, abrasions.

23          A. Not to my knowledge.

24          Q. Okay. There was no bruising involved?

25          A. Nah. I think I end up with one, only.

1 Q. But you were disciplined for committing the  
2 assault, correct?

3 A. Yes.

4 Q. And, that was in a disagreement over a kitchen  
5 job, and your feeling that the other inmate did not  
6 respect you?

7 A. That's fine. That's correct.

8 Q. And, you served time in the segregated housing  
9 unit?

10 A. Yes.

11 Q. Okay. And then three years later, the government  
12 still made a motion to reduce your sentence, correct?  
13 2011?

14 A. Yes.

15 MR. SALVATO: That's all the questions I  
16 have. Thank you.

17 THE COURT: May the witness be excused?

18 MR. LEIVA: Your Honor, we would like to  
19 reserve him.

20 MR. TOBLER: Your Honor, we would like to do  
21 brief redirect.

22 MR. AQUINO: No, no. I needed to cross.

23 THE COURT: Okay. Are you going to cross,  
24 Mr. Aquino?

25 MR. AQUINO: Yes, sir.

1 THE COURT: Okay. I didn't see anybody  
2 moving, so I thought maybe --

3 MR. AQUINO: I wasn't sure if others were --

4 THE COURT: No. You know, you can say "No  
5 questions" if you'd like. There's no requirement that  
6 everybody question every single witness, unless you want  
7 to.

8 CROSS-EXAMINATION

9 BY MR. AQUINO:

10 Q. Good afternoon, sir. My name is Jerry Aquino. I  
11 represent Mr. Chavez, along with Ms. Amato.

12 A. Good afternoon.

13 Q. I just have a few questions for you.

14 Is it correct that the clique leader -- the  
15 clique leader is the one that issues a green light?

16 A. We all have to come to an agreement to do so.

17 Q. Okay. But, he's the final word on that; is that  
18 correct?

19 A. Yes, sir.

20 Q. Okay. Now, in that regard, it's important that  
21 the clique leader like you if you're a soldier in his  
22 clique, right?

23 A. What you mean, like me?

24 Q. Sure. If, for example, someone like you either  
25 murdered the wrong person or didn't carry out a murder

1 properly, that could result in the clique leader being  
2 upset at you, right?

3 A. Not really.

4 Q. He wouldn't be upset if you murdered the wrong  
5 person?

6 A. No.

7 Q. Okay. And he wouldn't be upset if you didn't  
8 carry out a murder correctly?

9 A. Well, if -- as long as the murder has been done,  
10 it doesn't matter.

11 Q. If the clique leader felt that a mistake was  
12 made, he could order a green light on you, correct?

13 A. Yes.

14 Q. Okay. Now, I thought you testified -- and you  
15 correct me if I'm wrong -- that the tattoos on your  
16 forehead are a mistake, correct?

17 A. I was drunk.

18 Q. Right.

19 But I thought you testified that you had tattoos  
20 on your arms and elbows. Am I wrong or right?

21 A. Yes, on my arms.

22 Q. Each one?

23 A. Yes, sir.

24 Q. Okay. And, is the point of that, those tattoos  
25 on your arms, each arm, is that kind of an advertisement

1 to the world that you're a gang member?

2 A. Yes, back in the days.

3 Q. Right. Okay. Now, there's a lot of discussion  
4 that you had about the issue of *chavalas*, correct?

5 A. Yes.

6 Q. And, would the gang Latin Homies, Latin Homies,  
7 would those constitute *chavalas*?

8 A. What kind of Latin homies are you talking about?

9 Q. Is there a gang called Latin Homies?

10 A. La Rasa, one that I knew.

11 Q. You say "no"? I couldn't hear you.

12 A. La Rasa, that's the only one I remember.

13 Q. Okay.

14 And if you're in a gang that's not a member, part  
15 of MS, that's considered being a *chavala*, correct?

16 A. Yes, sir.

17 Q. Now, you also testified that, I believe, phone  
18 calls were made that you were involved with, either with  
19 the clique leader or among gang members. Is that  
20 accurate?

21 A. Yes, sir.

22 Q. And often when you make these calls, is it  
23 accurate that you speak in coded language?

24 A. Yes, sir.

25 Q. And that's done for the purpose of making sure

1 that law enforcement doesn't really know what you're  
2 talking about; is that correct?

3 A. Yes, sir.

4 Q. Okay. And so, the person at the other end of the  
5 phone would have to know the code, right, so to speak --

6 A. Yes.

7 Q. -- to be able to translate what you're saying,  
8 correct?

9 A. Yes.

10 Q. Okay. And, is it correct -- you're from El  
11 Salvador; is that accurate?

12 A. Yes, sir.

13 Q. And often the expressions that you use in these  
14 coded telephone calls are often Salvadorian expressions  
15 particular to El Salvador; is that right?

16 A. Yes.

17 MR. AQUINO: That's all the questions I  
18 have. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. TOBLER:

21 Q. Mr. Alfaro Fuentes, you were asked many questions  
22 by defense counsel about your plea agreement and your  
23 understanding of the plea agreement. What is your  
24 understanding of the consequences with respect to your  
25 plea agreement with the government, if you lie?



1           A.    That my plea agreement won't be good for me any  
2 more.

3           Q.    You testified on cross-examination that when a  
4 homeboy tells you that they committed a crime for the  
5 gang, you try to corroborate what they tell you.

6                   What would happen to a gang member who tells his  
7 homeboys that he committed a crime, but then the gang  
8 finds out that he was lying about that?

9           A.    Nothing.

10          Q.    Several attorneys asked you questions about why  
11 you have a tattoo on your head. Your testimony is that  
12 you were drunk?

13          A.    Yes, sir.

14          Q.    How drunk were you?

15          A.    Very drunk, to a point that I passed out when --  
16 when I woke up and they woke me up and told me they were  
17 finished.

18                   MR. TOBLER: No further questions, Your  
19 Honor.

20                   May this witness be excused?

21                   MR. LEIVA: Your Honor, if we could have a  
22 reserve, Your Honor.

23                   MR. TOBLER: Your Honor, may we approach?

24                   THE COURT: We will take this up at the end  
25 of the day. For right now, I'll have him leave and at

1 the end of the day we will take it up. Is that  
2 satisfactory?

3 MS. MARTINEZ: May we approach, Your Honor?

4 MR. TOBLER: We need to approach, Your  
5 Honor.

6 THE COURT: Okay. All right.

7 (Sidebar conference held as follows:)

8 THE COURT: Is this a sidebar under seal or  
9 what?

10 MS. MARTINEZ: I think --

11 MR. CRAWLEY: Your Honor --

12 THE COURT: I just asked the question.

13 MS. MARTINEZ: I think, based on what I  
14 intend to say, it's fine for the defendants to hear it.  
15 If it goes into any more detail, we may have to make a  
16 different hearing on that. We're fine not being under  
17 seal.

18 THE COURT: All right. I'm listening.

19 MS. MARTINEZ: Your Honor, the -- as we've  
20 heard in open court today, this witness is in the  
21 Witness Protection Program. There are serious --

22 THE COURT: Wait for the reporter.

23 MS. MARTINEZ: Your Honor, as we've heard in  
24 open court, this witness is in the Witness Protection  
25 Program. There are obvious reasons, very serious

1 concerns, related to him.

2 The marshals who were escorting him here are  
3 prepared to take him elsewhere, essentially, immediately  
4 when Your Honor excuses him.

5 So, if there's a motion to have him held  
6 longer, we would like that heard immediately, and we  
7 would like a ruling on that immediately, so that he is  
8 not here where he could be in greater jeopardy for any  
9 longer than he absolutely needs to be.

10 MR. LEIVA: Manuel Leiva, Your Honor. I  
11 understand the security concerns, and, I'm not  
12 requesting he be held here.

13 I mean, if the government needs a week or  
14 two weeks advance notice of when we may call him, we can  
15 provide that.

16 THE COURT: Why don't we do this: Ask him  
17 the questions now.

18 MR. LEIVA: It's -- because we need to look  
19 into some things that were disclosed today, Your Honor.  
20 That's not -- why we're not ready to do so today. There  
21 were some things, for example, that the government  
22 didn't provide us, that he admitted to, such as the  
23 immigration assistance that he was receiving.

24 Now, I know that was already dealt with, but  
25 other stuff that came out as well that we would like an

1 opportunity to look into.

2 And again, I understand their security  
3 concerns, and we can work with the government, giving  
4 them, you know, enough advance warning as they need.

5 MS. MARTINEZ: May I respond, Your Honor?

6 THE COURT: Sure.

7 MS. MARTINEZ: Your Honor, I think we need  
8 much more of a proffer on the record in order to be  
9 holding this witness, especially in light of the  
10 security concerns, for any longer.

11 This witness has testified, as he said,  
12 seven or eight times. Those transcripts have been  
13 provided to the defense counsel. Ample disclosures have  
14 been made, including the fact that he is in the Witness  
15 Protection Program.

16 If counsel wants to claim that something  
17 came out on direct that was entirely a surprise to them,  
18 when this witness has testified in open court numerous  
19 times, and they've read the transcripts, I think there  
20 needs to be more of a proffer on the record before we  
21 hold this witness further to recall on this case.

22 MR. LEIVA: Your Honor, the only concern  
23 with that is -- and of course we're tipping our hand on  
24 what we expect to do with this witness, and I don't  
25 think I should have to do that.

1 THE COURT: Did you subpoena him?

2 MR. LEIVA: No, Your Honor, we did not.

3 THE COURT: Are you finished?

4 MR. LEIVA: Yes, sir.

5 THE COURT: I'm going to let the witness go.

6 If you have a motion to file, file it. But I'm not  
7 going to have him held here.

8 MR. LEIVA: Thank you.

9 (Thereupon, the side-bar conference was  
10 concluded.)

11 THE COURT: He's excused.

12 Did you have any questions for him?

13 (No response.)

14 (Thereupon, the witness withdrew from the  
15 stand.)

16 THE COURT: Okay. Next witness.

17 MR. TOBLER: Your Honor, the government  
18 calls Jay Choi.

19 (Witness sworn.)

20 THE WITNESS: I do.

21 THE COURT: You may proceed.

22 THEREUPON, JAY CHOI, having been duly sworn,  
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. TOBLER:

1 Q. Good afternoon, Mr. Choi.

2 A. Good afternoon.

3 BY MR. TOBLER:

4 Q. Could you please state your name and spell it for  
5 the record?

6 A. Jay Choi; J-a-y, last name, C-h-o-i.

7 Q. Where do you work, Mr. Choi?

8 A. Herndon Police Department.

9 Q. How long have you worked at the Herndon Police  
10 Department?

11 A. Over 13 years.

12 Q. What is your current position in the police  
13 department?

14 A. Senior police officer.

15 Q. I would like to direct your attention to May 16,  
16 2004. What was your position at that time?

17 A. Private first class, working patrol.

18 Q. Were you working that night?

19 A. I was.

20 Q. What were your duties that night?

21 A. I was working as part of the patrol, midnight  
22 shift. We work from 8:00 p.m. to 7:00 a.m., and respond  
23 to dispatch calls for service as well as conduct traffic  
24 enforcement.

25 Q. What dispatch calls did you receive that night?

1       A. That night, a little after 9:40 p.m., received a  
2 report of a shots fired from Park Avenue.

3       Q. What city was that in?

4       A. That's Town of Herndon, Virginia.

5       Q. How far away were you from the reported scene of  
6 the shooting at the time you received that dispatch  
7 call?

8       A. I was about seven blocks, about point --  
9 0.6 miles.

10      Q. How long did it take you to arrive on the scene?

11      A. Less than a minute.

12      Q. Please describe the neighborhood in which the  
13 reported shooting occurred.

14      A. Primarily townhouses. It's all residential. And  
15 Park Avenue is just a -- one lane each direction, with a  
16 double yellow line in the middle.

17      Q. What did you observe upon arriving at the scene?

18      A. I pulled up. I saw a male subject laying on his  
19 back in the roadway, motionless. Approached. He wasn't  
20 breathing, no pulse. And my attention went to a second  
21 subject nearby on the sidewalk.

22      Q. Please describe what you observed about the  
23 second subject nearby on the sidewalk.

24      A. The second subject was a female, not in the  
25 roadway, on the sidewalk, just a -- feet away. She was

1 frantic, was coughing, started spitting up blood, and  
2 told me that she and her brother had been shot.

3 Q. Was she able to describe the people that were  
4 responsible for the shooting?

5 A. She was able to provide a description for one of  
6 the subjects, yes.

7 Q. How did she describe that subject?

8 A. Described the subject as a Hispanic male, had a  
9 tattoo on his forehead, the letters "MS."

10 Q. Did she identify the other person who was with  
11 her, who had been shot?

12 A. Yes, she did. She stated that it was her  
13 brother, Jose.

14 Q. Were you able to identify her as well?

15 A. Yes, I was.

16 Q. What is her identity?

17 A. She told me her name is Lorena Sandoval.

18 Q. What happened to Ms. Sandoval after you spoke  
19 with her?

20 A. Well, I noticed that she had a gunshot wound to  
21 her shoulder, left side, and also a gunshot wound to the  
22 center of her back. Called for rescue to have her  
23 transported over to Fairfax Hospital.

24 She provided a description of what had happened  
25 right before the shots had been fired, as we waited for



1 the ambulance.

2 Q. Who did law enforcement seek in connection with  
3 this crime?

4 A. A Roberto Alfaro Fuentes.

5 Q. Do you know him by any other names?

6 A. Yes. He has -- goes by the gang monicker of  
7 Buso.

8 Q. Did any law enforcement seek anyone else in  
9 connection with the crime?

10 A. Yes, one other subject.

11 Q. Was Mr. Alfaro Fuentes ultimately arrested?

12 A. He was.

13 Q. Where?

14 A. Los Angeles, California.

15 MR. CONTE: This calls for a hearsay  
16 response, Your Honor.

17 THE COURT: Sir, I can't hear you.

18 MR. CONTE: I said that calls for a hearsay  
19 response.

20 THE COURT: Sustained. Sustained.

21 BY MR. TOBLER:

22 Q. Where did you next see Mr. Alfaro Fuentes?

23 A. I saw him in Los Angeles, where I was part of the  
24 extradition team, and bought him back here to Fairfax  
25 County, Virginia.

1 MR. TOBLER: No further questions, Your  
2 Honor.

3 MR. LEIVA: No cross-examination, Your  
4 Honor.

5 THE COURT: All right.

6 May the witness be excused?

7 (No audible response.)

8 THE COURT: All right.

9 You're free to leave, sir. Thank you for  
10 coming.

11 THE WITNESS: Thank you, sir.

12 (Thereupon, the witness withdrew from the  
13 stand.)

14 THE COURT: Next witness.

15 MR. TOBLER: Your Honor, the government  
16 calls Dr. Frances Field.

17 (Witness sworn.)

18 THE WITNESS: I do.

19 THEREUPON, FRANCES FIELD, having been duly  
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. TOBLER:

23 Q. Good afternoon, Dr. Field.

24 A. (Bumps microphone) Oops. Sorry.

25 Q. Good afternoon, Dr. Field.

1 A. Good afternoon.

2 Q. Could you please state your name and spell it for  
3 the record.

4 A. Frances Field, F-r-a-n-c-e-s, F-i-e-l-d.

5 Q. Where do you work, Dr. Field?

6 A. At the Office of the Chief Medical Examiner in  
7 Manassas.

8 Q. Would you please describe for the jury your  
9 education and professional training?

10 A. After medical school, I did a four years of  
11 training in anatomic and clinical pathology. I then did  
12 an extra year of training in diseases of the lungs, and  
13 then a year of training in forensic pathology. I am  
14 board certified in anatomic and clinical pathology and  
15 in forensic pathology.

16 Q. What is your specialty, Dr. Field?

17 A. Forensic pathology.

18 Q. What is forensic pathology?

19 A. Forensic pathology is the performance of post  
20 mortem examinations or autopsies on people who die  
21 suddenly and unexpectedly, including people who die as a  
22 result of homicides, suicides, accidents as well as a  
23 number of natural deaths where there's no physician to  
24 account for why the person died.

25 These autopsies are done to either rule out or

1 rule in the legal or illegal nature of the death and for  
2 possible presentation in court.

3 Q. As part of being a forensic pathologist, do you  
4 offer an opinion as to a cause and manner of death?

5 A. Yes, I do.

6 Q. How long have you been with the Office of the  
7 Chief Medical Examiner?

8 A. Since 1985, with -- I actually retired for about  
9 a year, and then have been back since that time.

10 Q. What is your current position in that office?

11 A. I'm a part-time assistant chief medical examiner.

12 Q. What are your duties in the position of assistant  
13 chief medical examiner?

14 A. The main duty is to perform autopsies or external  
15 examinations on sudden deaths, to establish a cause and  
16 assist in establishing a manner of death, and for court  
17 presentations.

18 Q. How many autopsies have you performed in your  
19 career?

20 A. Several thousand.

21 Q. Have you ever testified in court as a forensic  
22 pathologist?

23 A. Yes.

24 Q. How many times, approximately?

25 A. Several hundred times.

1 Q. Please describe briefly for the jury the steps  
2 you take when you're performing an autopsy.

3 A. First, the body is received at the Medical  
4 Examiner's Office. And, it is examined as received, so  
5 it may come clothed or not, or may have hospital  
6 intervention about it.

7 We describe on -- in paper and a diagram all the  
8 injuries that are present, all the different medical  
9 paraphernalia that might be about the body.

10 After that, we unclothe the body and again  
11 describe what we see, clean the body, and describe,  
12 taking photographs along the way.

13 And after that, we perform the internal  
14 examination, where we remove the chest organs and the  
15 abdominal organs and the brain, and examine each organ  
16 individually.

17 We also take samples, depending on the type of  
18 case. Most cases get drug testing. Other cases get  
19 other types of laboratory procedures performed on them.

20 Q. Are there any special procedures used for the  
21 victims of shootings?

22 A. The -- the main procedures are examining the  
23 wound carefully to look for evidence of range of fire.  
24 We also take microscopic sections to either confirm that  
25 powder is present or to show that gun powder isn't

1 present. And we always remove the bullet, if a bullet  
2 is present in the body.

3 Q. Were you asked, in May 2004, to perform an  
4 autopsy on a shooting victim?

5 A. Yes.

6 Q. Who requested that you perform that autopsy?

7 A. I believe it was the Herndon Police Department.

8 Q. With the assistance --

9 THE WITNESS: Thank you.

10 BY MR. TOBLER:

11 Q. With the assistance of the courtroom security  
12 officer, I'd like you to take a look at what's been  
13 marked for government identification as Government's  
14 Exhibit 50.

15 A. May I take it out?

16 Q. Yes, you may.

17 Do you recognize this document, ma'am?

18 A. Yes. It's a copy of my autopsy report on Jose  
19 Sandoval.

20 Q. Is that your signature on the bottom of page one?

21 A. Yes.

22 Q. When did you perform this autopsy on Jose  
23 Sandoval?

24 A. May 17th of 2004, at 7:45 in the morning.

25 Q. What evidence of injury did you find to the

1 decedent?

2 A. He had a gunshot wound on his right arm that  
3 entered and exited the arm and reentered the chest.  
4 That wound injured both lungs, the stomach and the  
5 spleen, and caused internal bleeding into the chest  
6 cavities and into the abdominal cavity. And I recovered  
7 a bullet from the left side of the body.

8 Q. Were you able to reach an opin- --

9 A. He had another wound on the right upper back that  
10 bruised the right lung and entered the spinal canal,  
11 cutting the spinal cord completely apart at that place.  
12 And the bullet was recovered from inside the spinal  
13 canal.

14 And he also had a gunshot wound to his right  
15 thigh, that entered and exited the thigh.

16 Q. Were you able to reach an opinion as to the cause  
17 of Mr. Sandoval's death?

18 A. Yes.

19 Q. What is that opinion?

20 A. He died from penetrating gunshot wounds of the  
21 thorax and abdomen.

22 MR. TOBLER: Your Honor, at this time we  
23 would move for the admission of Government's Exhibit 50  
24 into evidence.

25 MR. JENKINS: No objection, Your Honor.

1 THE COURT: Received without objection.

2 MR. TOBLER: No further questions,

3 Your Honor.

4 MR. JENKINS: No questions, Your Honor, on  
5 behalf of Mr. Torres.

6 MR. LEIVA: Sorry, Your Honor. A couple  
7 questions.

8 CROSS-EXAMINATION

9 BY MR. LEIVA:

10 Q. Good afternoon, Dr. Fields (sic).

11 A. Good afternoon.

12 Q. Doctor, when you conducted the autopsy, did you  
13 do a review of the external portion of Mr. Sandoval's  
14 body?

15 A. Yes.

16 Q. All right. And did you note whether he had any  
17 tattoos or not?

18 A. May I refer to my report?

19 Q. Yes, Doctor.

20 A. No, he had none.

21 Q. None.

22 And were you able to determine his age, or were  
23 you told his age?

24 A. We were told the age.

25 Q. And what was his age?



1 A. His age was 17.

2 Q. All right. And, how much did he weigh?

3 A. 135 pounds.

4 Q. And how tall was he?

5 A. 64 inches.

6 Q. He was a petite individual?

7 A. Yes.

8 MR. LEIVA: That's all the questions I have,  
9 Your Honor. Thank you.

10 MR. TOBLER: Your Honor, may the witness be  
11 excused?

12 THE COURT: Yes.

13 Thank you for coming, Doctor. Good to see  
14 you.

15 THE WITNESS: Thank you.

16 (Thereupon, the witness withdrew from the  
17 stand.)

18 THE COURT: Next witness.

19 MR. CAMPBELL: Your Honor, the government  
20 calls Special Agent Clay Hicks.

21 (Witness sworn.)

22 THE WITNESS: I do.

23 THE COURT: You may proceed.  
24  
25

1                   THEREUPON, ROBERT CLAYTON HICKS, having been  
2           duly sworn, testified as follows:

3                   DIRECT EXAMINATION

4           BY MR. CAMPBELL:

5           Q.    Good afternoon, sir.

6           A.    Good afternoon.

7           Q.    Please state your full name and spell it for the  
8           record.

9           A.    Robert Clayton Hicks, H-i-c-k-s.

10          Q.    Where do you work?

11          A.    I'm a special agent with the FBI.

12          Q.    How long have you served with the FBI?

13          A.    Approximately 14 years now.

14          Q.    What assignments have you held within the FBI?

15          A.    I was initially assigned in the Omaha Division to  
16          work counterterrorism, counterintelligence and  
17          eventually criminal matters.

18                   Transferred to the Washington Field Office, and,  
19          worked various positions there, to include five years on  
20          a Northern Virginia gang and drug task force.

21                   Currently assigned to a headquarters element near  
22          Quantico, Virginia, responsible for rendering safe  
23          weapons of mass destruction.

24          Q.    Are you a supervisor at that headquarters?

25          A.    I am, indeed.

1 Q. Have you received any specialized training during  
2 your service?

3 A. Yes, sir.

4 Q. In what field?

5 A. Numerous fields, but, specific to -- to this  
6 case, I've attended several different classes, both  
7 within the FBI Academy, as well as externally, on gang  
8 participation, gang violence, international gangs,  
9 street gangs, and the methods and processes by which  
10 government entities, both state and federal, investigate  
11 those criminal matters.

12 Q. You mentioned that you served with the gang task  
13 force. What is the gang task force?

14 A. The gang task force is a collection of  
15 individuals representing different agencies, both  
16 federal, state, and local, primarily in the Northern  
17 Virginia area.

18 Q. What are the agencies?

19 Can you identify some of the agencies that are on  
20 that task force?

21 A. The FBI, Fairfax County Police department, Prince  
22 William Police Department, Herndon PD, Arlington,  
23 Alexandria, various -- numerous agencies in the Northern  
24 Virginia area.

25 Q. Sir, if I can direct your attention to late

1 September of 2013, do you recall participating in an  
2 investigation around that time period?

3 A. I do.

4 Q. And what was the nature of that investigation?

5 A. It was a conspiracy to commit murder by various  
6 gang members from the MS-13 street gang.

7 Q. What triggered the investigation?

8 A. An individual who decided to cooperate with law  
9 enforcement called the Prince William County Police  
10 Department and informed them of the nature of a  
11 conspiracy to murder an individual who had left the  
12 gang.

13 And that individual, after having been entered --  
14 or, excuse me -- after having been turned over to Prince  
15 William County Police Department, Detective Armstrong  
16 from the gang -- their gang task force called my  
17 supervisor, who then gave it to me.

18 Q. What was the date that the Prince William County  
19 Police Department was contacted by the cooperating  
20 witness?

21 A. The Prince William Police Department was  
22 contacted on September 30th of 2013.

23 Q. What did you do in response to that call?

24 A. Detective Armstrong and I went and interviewed  
25 the cooperator.

1 Q. Please look at Government's Exhibit 86-A.

2 A. Yes, sir.

3 Q. Do you recognize the person in that photograph?

4 A. I do.

5 Q. Is that a fair and accurate depiction of how he  
6 appeared?

7 A. Yes, sir, it is.

8 Q. What is that person's gang name?

9 A. He went by the name Drowsy.

10 Q. What was the gang name of the individual who was  
11 targeted for the murder?

12 A. Peligroso.

13 Q. What were the initials of Peligroso's real name?

14 A. DF.

15 Q. When you met with Drowsy in person, what did he  
16 tell you about the gang's plan to kill another gang  
17 member?

18 MR. CONTE: Objection, hearsay.

19 MR. CAMPBELL: Your Honor, this is offered  
20 not for the truth of the matter asserted, but as  
21 background and context to law enforcement's response.

22 THE COURT: All right. Objection's  
23 sustained.

24 BY MR. CAMPBELL:

25 Q. What did this cooperator, Drowsy, agree to do

1 with law enforcement after you met with him?

2 A. He agreed to perform several different monitored  
3 phone calls and meetings for law enforcement.

4 MR. CAMPBELL: If I may go back to the  
5 Exhibit 86-A, Your Honor, I would move 86-A into  
6 evidence at this time.

7 THE COURT: Received without objection.

8 BY MR. CAMPBELL:

9 Q. What did the cooperator agree to do for the FBI  
10 at that point?

11 A. He agreed to perform several different monitored  
12 phone calls and meetings for us.

13 Q. What was the purpose of such recordings?

14 A. Those recordings were utilized to gather evidence  
15 of the impending conspiracy to commit murder, and in  
16 order to also corroborate what he had told us.

17 Q. How did you enable him to secretly record these  
18 conversations?

19 A. The FBI and various law enforcement agencies  
20 utilize recording devices that are embedded into objects  
21 that are innocuous. And, he was -- on each of those  
22 occasions, he was provided with one by me in order to  
23 record either the phone call or the meeting.

24 Q. And, how does that device work, in fundamental  
25 terms?

1       A. The recording device itself, as I said, is  
2 embedded into various different innocuous devices --  
3 objects, I should say. And, the way that they were  
4 utilized in this particular instance was each of the  
5 devices is turned on prior to being given to the  
6 cooperator.

7           It is utilized -- being turned on, meaning the  
8 recording has begun.

9           It's given to the cooperator, and throughout the  
10 time that he utilizes it, he doesn't touch it until such  
11 time that I retrieve it from him.

12           And prior to that, in preparation for giving him  
13 the recording device, I took all the different recording  
14 devices that were given to him at different times,  
15 tested them, conducted a practice recording, download  
16 that recording on our computers utilizing our software,  
17 test the recording, ensure that it's functioning  
18 properly and as designed; charged the device and ensure  
19 that it's charged appropriately.

20           And then once tested and it meets my satisfaction  
21 for its performance, then, empty or delete all the test  
22 recordings so that you have maximum recording  
23 capability. Again, ensure it's charged to its fullest  
24 extent, and then go utilize it.

25       Q. And what do you do as an FBI agent before you

1 actually equip the operator with your recording device?

2 A. Generally a, what's called a preamble is recorded  
3 prior to providing the cooperator with the recording  
4 device. And the preamble consists primarily of my name,  
5 the date and time, and then just a short description of  
6 what the cooperator is about to do with the recording.

7 Q. Why do you record the preamble?

8 A. The preamble is utilized in order to be able to  
9 separate out different events that were recorded, but  
10 also specifically for the date, time stamp, in case the  
11 electronic date time stamp that's embedded or that's  
12 utilized in the recorder fails for some reason, or isn't  
13 set properly, you have that on the audio recording  
14 itself.

15 Q. How many times did this cooperating witness,  
16 Drowsy, use that recording device secretly to record  
17 conversations?

18 A. Three times over the course of two days.

19 Q. When was the first secret recording conducted?

20 A. The evening of September 30th, 2013,  
21 approximately 9:30 p.m., I believe.

22 Q. And where was that first secret recording  
23 conducted?

24 A. In the Park View apartments -- or near them,  
25 around them, in the Culmore area of Fairfax, Virginia.



1 Q. And, what was the purpose for that particular  
2 recording?

3 A. The purpose for that recording was, he had been  
4 summoned to a meeting to discuss the --

5 MR. CONTE: Objection, Your Honor. Again,  
6 it calls for hearsay response.

7 MR. CAMPBELL: Your Honor, this is context  
8 to explain why they are responding the way they are.  
9 It's very limited.

10 THE COURT: All right. Well, I sustain the  
11 objection. He can say that he directed him to go some  
12 place, if he did that.

13 BY MR. CAMPBELL:

14 Q. What did you do with Drowsy before he went to  
15 this gang meeting?

16 A. Prior to dropping him off, we briefed him on  
17 several safety measures, how we would respond, how he  
18 needed to respond if he found himself in trouble, if he  
19 was threatened in any way.

20 Provided him with the recording. Gave him  
21 directions as far as when and where we were going to  
22 drop him off, when and where to meet us after the fact.

23 And then, upon briefing him to our satisfaction,  
24 we dropped him off near the neighborhood and he went to  
25 the meeting after that.

1 Q. And, what did you do while he was at that  
2 meeting?

3 A. I, along with several other detectives from  
4 Fairfax County Police Department and others, conducted  
5 surveillance in the area, both near and more as an area  
6 surveillance.

7 Q. And why do you conduct that surveillance?

8 A. A couple reasons. Initially and primarily for  
9 the safety of the cooperator, should he find himself in  
10 trouble, you know, with respect to the people that he's  
11 going to go meet with, to provide us, you know, ample  
12 time to come help him.

13 And secondarily, to gather evidence of whatever  
14 kind, visually, that we could see, people coming and  
15 going from the meetings, things of that nature.

16 Q. When Drowsy returned from the gang meeting, what  
17 did you do with him?

18 A. Initially retrieved the recording device from him  
19 and secured it, turned it off, and then debriefed him on  
20 what happened during the meeting, and ensured he was  
21 safe, and then moved him away from the area.

22 Q. When was the second secret recording conducted?

23 A. The second recording was the following day, on  
24 October 1st, approximately 5:00 p.m.

25 Q. And where was that secret recording conducted?

1           A. It was conducted in a par- -- on top of a parking  
2 garage in Woodbridge, Virginia.

3           Q. And what was the purpose of that?

4           A. The purpose for that particular recording was to  
5 record the phone call to several different higher level  
6 PVLS clique members, in order to get details of when and  
7 where they were to pick him up in order to go conduct  
8 the murder.

9           Q. Where were you when that recording occurred?

10          A. Right beside the cooperator, in a vehicle.

11          Q. What did you do with the recording at the  
12 conclusion of that phone call?

13          A. I stopped the recording, secured it, ensured that  
14 it functioned properly, and then maintained the recorder  
15 in my possession until further use.

16          Q. When was the last of the three secret recordings  
17 conducted?

18          A. Later that same evening on October 1st, at  
19 approximately 7:40 or so in the evening.

20          Q. Where was that recording conducted?

21          A. That recording, again, was on the cooperator's  
22 person at the time, and, that was conducted in a vehicle  
23 with three other MS members, and, along the drive to go  
24 conduct the murder and then shortly thereafter.

25          Q. What did you do while Drowsy was being driven in

1 that vehicle?

2 A. Again, conducted surveillance, this time  
3 primarily with Prince William County Police Department  
4 individuals -- or at least that's who I was with.

5 And upon the group of individuals leaving the  
6 parking lot, a traffic stop was conducted, and then I  
7 came to the -- came upon the traffic stop and secured  
8 the recorder later on once the cooperator was at the  
9 Garfield -- Prince William County Police Department at  
10 Garfield Station.

11 Q. At the conclusion of your investigation over  
12 those two days, what did you do with those three  
13 recordings?

14 A. Excuse me. I took the recordings back to the  
15 office, downloaded them onto our computer via -- via our  
16 software, and then saved them to DVDs, to be included  
17 into electronic evidence for the FBI, to be maintained.

18 Q. With the assistance of Mr. Toliver, will you  
19 please look at Government's Exhibits 1-A, 3-A and 5-A.  
20 Again, sir, that's Government's Exhibits 1-A, 3-A, and  
21 5-A.

22 A. Okay.

23 Q. Sir, do you recognize those items?

24 A. I do.

25 Q. And what are they?

1       A. Those are copies of the original recordings that  
2 I made with the cooperator for the three different  
3 events.

4       Q. What did you do with those recordings that you're  
5 looking at?

6       A. So, a couple weeks ago, I listened to these  
7 particular copies of the recordings and noted that they  
8 were the same as the originals -- or copies of the  
9 originals that I had made, and then placed my initials  
10 on each of the CDs.

11       Q. In response to the information you received that  
12 the gang planned to commit a murder, what did the FBI  
13 and the gang task force do at that point?

14       A. So, because of the obvious dangerous nature of  
15 the allegations that were being made and what appeared  
16 to be corroborated through the recordings that we  
17 received, we formulated an operations plan. It was  
18 approved through our management, as well as that of the  
19 police departments that were involved, in order to, like  
20 I said, equip Drowsy with a recorder -- a recording  
21 device.

22               And once we knew from the meetings and from the  
23 information received from these recordings where the  
24 murder was supposed to take place, we then formulated a  
25 plan to have Drowsy in the vehicle with them, as they

1 desired. They had told him that they wanted him to come  
2 commit the murder as well. So, he was going to be the  
3 individual that carried the recorder for us.

4 And, in order to limit their potential actions at  
5 the site, which was Garfield High School, right behind  
6 Potomac Mills Mall, we placed a marked police unit in  
7 the parking lot in order to spook them a little bit once  
8 they finally made their drive into the parking lot.

9 We set up a surveillance plan, as I mentioned  
10 earlier, in order to keep watch over them, both, again,  
11 for the safety of our cooperator, but also for the  
12 safety of the public, because during the meetings they  
13 had indicated that they were going to conduct a murder  
14 with a shotgun, and then potentially two machetes.

15 MR. LEIVA: Excuse me. I object to hearsay.

16 THE COURT: Sustained.

17 BY MR. CAMPBELL:

18 Q. What was the nature of the operations plan, the  
19 essence of it, with respect to interdicting the  
20 attempted murder?

21 A. The basic plan was, as soon as the vehicle drove  
22 into the parking lot -- after having picked up the  
23 cooperator, drove into the parking lot of Garfield High  
24 School, upon it departing, which we fully expected it to  
25 do once they saw the police cruiser -- the detective,

1 Dale Young, from Prince William County Police  
2 Department, was driving another marked Prince William  
3 County police cruiser, and would conduct a traffic stop  
4 of the individuals, and we would be in the area to  
5 support Officer Young as needed.

6 Q. Why did you want to make it appear to be a  
7 traffic stop?

8 A. At the time, we did not want to alert those in  
9 the vehicle, those involved in the plan, the murder  
10 plan, to realize that we had a cooperator and that we  
11 knew of their plan ahead of time. So, we conducted a  
12 traffic stop in order to make it look a little less  
13 conspicuous on our part.

14 Q. After Detective Young conducted that traffic stop  
15 with his cruiser, what did you do?

16 A. Shortly after Detective Young stopped the  
17 vehicle, I and Detective Armstrong drove up to where he  
18 had stopped them, just on the outskirts of the Potomac  
19 Mills Mall, and got out of the vehicle, walked over to  
20 where the individuals had been pulled out of the vehicle  
21 and were seated on the ground.

22 Q. Please look at Government's Exhibit 86-C.

23 A. Okay.

24 Q. Sir, do you recognize the person in that  
25 photograph?

1 A. I do.

2 Q. Who is that?

3 A. An individual who went by the name of Demente.

4 Q. Does the photograph fairly and accurately reflect  
5 his appearance --

6 A. It does.

7 Q. -- on that night?

8 A. It does.

9 MR. CAMPBELL: Your Honor, I move  
10 Government's Exhibit 86-C into evidence and request that  
11 it be published for the jury.

12 MR. JENKINS: No objection, Your Honor.

13 THE COURT: Received.

14 It may be published.

15 BY MR. CAMPBELL:

16 Q. Sir, please look at Government's Exhibit's 86-B.

17 A. Okay.

18 Q. Do you recognize the person in that photograph?

19 A. I do.

20 Q. Who is that person?

21 A. It's an individual who went by the gang name  
22 Greñas.

23 Q. And does that photograph fairly and accurately  
24 reflect how he appeared on the evening of that traffic  
25 stop?



1           A.    It does.

2                   MR. CAMPBELL: Your Honor, I move  
3 Government's Exhibit 86-B into evidence and request that  
4 it be published for the jury.

5                   MR. JENKINS: No objection, Your Honor.

6                   THE COURT: 86-B will be received.

7                   You may publish.

8 BY MR. CAMPBELL:

9           Q.    In addition to those two gang members, who else  
10 was in the car when it was stopped that evening?

11           A.    Obviously, as I've stated, Drowsy, the  
12 cooperator, and another individual by the name of  
13 Marciano.

14           Q.    What was the age of Marciano, generally?

15           A.    He's a juvenile.

16           Q.    What did you do after conducting the car stop and  
17 identifying those individuals?

18           A.    So, when I approached the individuals, they -- as  
19 I said, they were seated on the ground, having been  
20 removed from the vehicle by the time I got there.

21                   Upon Detective Armstrong's receiving permission  
22 to search the vehicle, we began to search the vehicle to  
23 look for the weapons that we believed were in the  
24 vehicle.

25           Q.    And what weapons did you discover during the

1 search of that car?

2 A. We found a sawed off shotgun and two machetes.

3 Q. Sir, please look at Government's Exhibit 86-E.

4 A. Yes, sir.

5 Q. Do you recognize that photograph?

6 A. I do.

7 Q. What is that a photograph of?

8 A. That is a photograph of the 12-gauge shotgun that  
9 we found, or that I -- that we located in the vehicle,  
10 as well as one of the machetes.

11 Q. And when was that photograph taken?

12 A. During the search.

13 Q. Does the photograph fairly and accurately reflect  
14 how the weapons appeared on that night?

15 A. It does, indeed.

16 MR. CAMPBELL: Your Honor, I move  
17 Government's Exhibit 86-E into evidence and request that  
18 it be published for the jury.

19 THE COURT: Received.

20 BY MR. CAMPBELL:

21 Q. Special Agent Hicks, where in the car were those  
22 weapons located?

23 A. They were located in the trunk of the vehicle,  
24 hidden up under the lining of the trunk, as far forward  
25 as you can get in the trunk, up against the back side of

1 the rear passenger seat.

2 Q. Sir, please look at Government's Exhibit 86-D.

3 A. Yes, sir.

4 Q. Do you recognize the items in that photograph?

5 A. I do.

6 Q. What's in that photograph?

7 A. That photograph depicts the location where I and  
8 Detective Young found the shotgun and --

9 Q. Does that fairly --

10 A. -- the shotgun and the machete.

11 Q. And does that photograph fairly and accurately  
12 reflect the location of those weapons the night you  
13 received them?

14 A. It does.

15 MR. CAMPBELL: Your Honor, I move  
16 Government's Exhibit 86-D into evidence and request that  
17 it be published for the jury.

18 MR. JENKINS: No objection, Your Honor.

19 THE COURT: Received.

20 BY MR. CAMPBELL:

21 Q. Sir, please look at Government's Exhibit 86-F.

22 A. Yes, sir.

23 Q. Do you recognize the item in that photograph?

24 A. I do. That is the underside of the shotgun,  
25 located that same night.

1 Q. And what does it show on that picture?

2 A. It shows a serial number as well as another model  
3 number.

4 Q. Does that photograph fairly and accurately  
5 reflect that numerical identifier as it appeared that  
6 night?

7 A. It does.

8 MR. CAMPBELL: Your Honor, I move  
9 Government's Exhibit 86-F into evidence and request that  
10 it be published for the jury.

11 MR. JENKINS: No objection, Your Honor.

12 THE COURT: Received.

13 BY MR. CAMPBELL:

14 Q. Special Agent Hicks, with the assistance of the  
15 court security officer, Mr. Toliver, please look at  
16 Government's Exhibit 32.

17 A. Yes.

18 Q. Sir, do you recognize that weapon?

19 A. I do.

20 Q. What is it?

21 A. That is the same weapon located the night in  
22 question, as well as the -- in the photographs that have  
23 been displayed.

24 Q. How do you know that's the same shotgun that you  
25 seized on that night?

1           A.    The serial number found on the bottom of the  
2    weapon matches that in the photo that we took that  
3    evening.

4           Additionally, I recognize the condition in which  
5    I found the weapon in.

6           Q.    You said --

7           A.    There are several different engravings on the  
8    side that are familiar to me as well.

9           Q.    And, you said, sir, that it's in substantially  
10   the same condition as you seized it that evening?

11          A.    It is.

12                   MR. CAMPBELL: Your Honor, I move  
13   Government's Exhibit 32 into evidence and request that  
14   it be presented before the jury.

15                   THE COURT: We will admit it. It won't go  
16   back, but they can see it. Let the jury -- publish, let  
17   them see it.

18                   You can let them see it, Mr. Toliver.

19                   (Exhibit published to jury.)

20   BY MR. CAMPBELL:

21           Q.    Special Agent Hicks, please look at what has been  
22   marked as Government's Exhibit 30.

23           A.    Okay.

24           Q.    Sir, do you recognize that weapon?

25           A.    I do.

1 Q. And, how do you know that's the same weapon that  
2 you seized from this car that night?

3 A. Because it has some of the same exact coloring,  
4 same rust pattern on the blade, as well as I recall some  
5 of the, for lack of a better term, dings into the blade,  
6 some of the damage to the blade.

7 Q. And what is that weapon?

8 A. That is the machete that was depicted in the  
9 photograph earlier with the shotgun.

10 Q. And, is it in the same or substantially the same  
11 condition as when you seized it?

12 A. Yes, sir, it is.

13 MR. CAMPBELL: Your Honor, I move  
14 Government's Exhibit 30 into evidence, and request that  
15 it be presented before the jury.

16 THE COURT: Received. But again, it won't  
17 go back. They can just see it now.

18 MR. CAMPBELL: Yes, Your Honor.

19 (Exhibit published to jury.)

20 BY MR. CAMPBELL:

21 Q. Sir, please look at what has been marked as  
22 Government's Exhibit 31.

23 A. Yes, sir.

24 Q. What is that?

25 A. That is the other machete that was located in the

1 vehicle that evening. It's a machete from Harbour  
2 Freight.

3 Q. How do you know it's the same machete that you  
4 seized that evening?

5 A. Again, because I seized it, I recall its nature  
6 and what it appears like. I also have one at home,  
7 so --

8 MR. CAMPBELL: Your Honor --

9 THE WITNESS: -- it's very similar.

10 MR. CAMPBELL: Your Honor, I move  
11 Government's Exhibit 31 into evidence and request that  
12 it be presented before the jury.

13 MR. JENKINS: No objection, Your Honor.

14 THE COURT: Exhibit 31 will be received and  
15 presented, but not going back for deliberations.

16 (Exhibit published to jury.)

17 BY MR. CAMPBELL:

18 Q. Special Agent Hicks, please look at Government's  
19 Exhibit 34.

20 A. Yes, sir.

21 Q. You recognize those items?

22 A. I do.

23 Q. What are they?

24 A. These are the glove in which -- or this is the  
25 glove and these are the three 40-caliber rounds that we

1 located and that I seized in the trunk of the vehicle  
2 that night.

3 Q. How do you know that they're the same bullets and  
4 the glove you seized that evening?

5 A. Well, I bagged it, and we put it into evidence --  
6 I put it into evidence shortly thereafter. I also  
7 recognize the glove from that evening.

8 The rounds appear to be the same. There's no  
9 serial number, per se, but they appear to be the same  
10 rounds.

11 Q. What did you mark on that bag?

12 A. In addition to the date and case file number,  
13 evidence number, I wrote, "Seized by" and then my name,  
14 locate -- where it was located in the -- in the trunk of  
15 the vehicle, and then provided a description: "Three  
16 40-caliber rounds, along with a black and silver glove."

17 MR. CAMPBELL: Your Honor, I move  
18 Government's Exhibit 34 into evidence and ask that it be  
19 presented to the jury.

20 MR. JENKINS: No objection, Your Honor.

21 THE COURT: Received.

22 (Exhibit published to jury.)

23 BY MR. CAMPBELL:

24 Q. Sir, in addition to a search of the trunk, where  
25 else did you search in that car?



1           A.    The entire vehicles were -- vehicle was searched,  
2   to include the personnel space, front and back seat  
3   areas.

4           Q.    And what was discovered in that compartment, the  
5   passenger compartment?

6           A.    In addition to, again, what we've already  
7   discussed in the trunk, we discovered a -- two 12-gauge  
8   shotgun shells, as well as a notebook with MS-13  
9   graffiti, names of members of the PVLS clique, and  
10   whether they had paid their dues or not, things of that  
11   nature.

12          Q.    Sir --

13          A.    So forth.

14          Q.    -- please look at Government's Exhibit 33.

15          A.    Yes, sir.

16          Q.    Do you recognize those items?

17          A.    I do.

18          Q.    What are they?

19          A.    These are the two shotgun shells that were  
20   located in the front of the vehicle.

21          Q.    Sir, how do you know those are the same shotguns  
22   shells that you seized that night?

23          A.    Because, again, I recognized my handwriting on  
24   the bag, and they look materially the same as when we  
25   located them that evening.

1 MR. CAMPBELL: Your Honor, I move  
2 Government's Exhibit 33 into evidence and ask that it be  
3 presented before the jury.

4 MR. JENKINS: No objection, Your Honor.

5 THE COURT: 33 will be received and  
6 presented to the jury. It will not go back.

7 (Exhibit published to jury.)

8 BY MR. CAMPBELL:

9 Q. Please look at what has been marked as  
10 Government's Exhibit 35.

11 A. May I remove it?

12 Q. Yes, you may.

13 A. Yes, sir.

14 Q. And what is that?

15 A. This is the notebook that we located in the back  
16 floor board of the vehicle.

17 Q. And how do you know it's the same notebook that  
18 you seized that evening?

19 A. In reviewing it, I recognized all the different  
20 things that were in here, to include the list of the  
21 members of PVLS clique and whether they had paid their  
22 dues, and how much they had paid; in addition to that,  
23 numerous pages of graffiti -- known, very, very common  
24 graffiti for the MS-13 gang.

25 MR. CAMPBELL: Your Honor, I move

1 Government's Exhibit 35 into evidence.

2 And with the assistance of the court  
3 security officer -- and Special Agent Hicks, if you can  
4 flag the page that you just looked at with the  
5 membership list, I ask that the court security officer  
6 present that to the jury.

7 THE COURT: Received without objection.  
8 (Exhibit published to jury.)

9 MR. ZIMMERMAN: I'm sorry, Your Honor. What  
10 page is being shown to the jury?

11 THE COURT: The page he tabbed. I don't  
12 have the page number in front of me. I don't know.

13 MR. CAMPBELL: Your Honor, we will ask the  
14 witness to identify the page when Mr. Toliver has  
15 returned it.

16 THE COURT: All right.

17 Let defense counsel see the page, please.

18 MR. CAMPBELL: Your Honor, for the record,  
19 there's another copy of this that's been marked with  
20 page numbers. The original evidence has not been  
21 marked, for obvious reasons.

22 THE COURT: Okay. If, by chance, you have  
23 the exhibit number of the one that you think is marked,  
24 that might help us, if you know it.

25 MR. CAMPBELL: Your Honor, it's the same

1 number as this exhibit is marked; it's just a Redwell  
2 that I believe was attached to the exhibit.

3 THE COURT: Oh, I see.

4 Thank you very much.

5 MR. CAMPBELL: Your Honor, may we at this  
6 time bring up a photocopy of that document and publish  
7 it to the jury? Directly identifying page number 56.

8 MR. SALVATO: Is 56 what we're looking at  
9 now, Mr. Campbell?

10 MR. CAMPBELL: Yes.

11 THE COURT: Yes, you may. Go ahead.

12 It looks like it's sideways.

13 There you go.

14 It's illegible to me.

15 I have a piece of paper here that -- let  
16 counsel see it's the same one, I guess, but at least it  
17 appears to be legible.

18 MR. CAMPBELL: Counsel just advised, by  
19 looking at the actual document, they're content with  
20 that view.

21 THE COURT: I thought you were trying to  
22 show it to the jury.

23 MR. CAMPBELL: They've already seen it, Your  
24 Honor.

25 THE COURT: Oh, okay. Thank you.

1 Go ahead.

2 MR. CAMPBELL: Your Honor, finally, earlier  
3 Special Agent Hicks testified about the recordings that  
4 were made and that he reviewed -- this is Government's  
5 Exhibits 1-A, 3-A and 5-A -- and testified that he  
6 confirmed that, by the preamble, those were the  
7 recordings where he was present and equipped the  
8 cooperating witness, Drowsy.

9 We would move, 1-A, 3-A and 5-A into  
10 evidence at this time.

11 THE COURT: Received without objection.

12 MR. CAMPBELL: Your Honor, we have no  
13 further questions of this witness.

14 THE COURT: All right.

15 MR. JENKINS: May counsel proceed, Your  
16 Honor?

17 THE COURT: Yes, please.

18 CROSS-EXAMINATION

19 BY MR. JENKINS:

20 Q. Good evening -- good afternoon, Special Agent  
21 Hicks.

22 How long have you been an FBI agent?

23 A. Approximately 14 years now.

24 Q. Fourteen years.

25 And that 14 years, I believe you testified that

1 you've received a fair amount of training, correct?

2 A. Yes, sir.

3 Q. Training on law enforcement techniques?

4 A. Yes, sir.

5 Q. Training about gangs?

6 A. Yes, sir.

7 Q. And this is not the first time you've testified  
8 in court, is it?

9 A. No, sir.

10 Q. You've also received training on how to testify  
11 in court, correct?

12 A. From the FBI Academy, yes, sir.

13 Q. And at the academy they taught you that when  
14 you're testifying, that you should only relay on the  
15 facts, correct?

16 A. Always.

17 Q. Just what you know, correct?

18 A. Yes, sir.

19 Q. And not to speculate, correct?

20 A. Sure.

21 Q. And how many times have you testified?

22 A. Anywhere, five to ten. I couldn't put an exact  
23 number on it.

24 Q. About five to ten times?

25 A. In trials; numerous other times in pretrial

1 motions, things of that nature.

2 Q. Well, give the jury a sense of how many -- the  
3 total times, approximately, that you've testified in  
4 court.

5 A. Fifteen times.

6 Q. How many of those were MS-13 related matters?

7 A. I believe just one before this.

8 Q. One before this?

9 A. I believe so.

10 Q. And, have you had the occasion to arrest members  
11 of MS-13 before?

12 A. In various capacities. I have been one of the  
13 members of the Washington Field Office, as well as the  
14 Omaha Field Office, SWAT team for probably ten years.  
15 So, I've arrested MS-13 members in various different  
16 places from other different -- or from different cases  
17 as well.

18 Q. In fact, you were even a member of the gang task  
19 force, correct?

20 A. Not directly. I was part of the squad that  
21 participated with the gang task force, but I, myself,  
22 was not directly assigned to the gang task force.

23 Q. How long did you participate with that squad?

24 A. From approximately January of 2010 through  
25 September of 2014.

1 Q. So, for about four years?

2 A. Almost five.

3 Q. Almost five years.

4 And, during that time, is it fair to say that you  
5 gained a fair amount of knowledge about MS-13?

6 A. To an extent, yes, sir.

7 Q. And about gangs in general, correct?

8 A. Yes, sir. I wouldn't consider myself an expert  
9 by any stretch, but knowledgeable. Yes, sir.

10 Q. Knowledgeable about their manner and means, ways  
11 of committing crimes?

12 A. In a general sense. Each clique seems to do it a  
13 little differently, at times, but in a general sense,  
14 yes, sir.

15 Q. And when you first came in contact with this  
16 individual that you described as Drowsy, shown in  
17 Government's Exhibit 86-A --

18 MR. JENKINS: If I could have that put up.

19 BY MR. JENKINS:

20 Q. This is Drowsy, correct?

21 A. Yes, sir.

22 Q. And this is the individual who you understood  
23 contacted law enforcement about a tip concerning a  
24 murder plot, correct?

25 A. Yes, sir.



1 Q. Okay.

2 MR. JENKINS: You can take it down now.

3 BY MR. JENKINS:

4 Q. Now, from your experience as an FBI agent, you  
5 know that when you are dealing with cooperating gang  
6 members, that you have to take certain precautions,  
7 correct?

8 A. Specifically, what?

9 Q. Well, when an individual who is a self-identified  
10 gang member comes to law enforcement and wants to  
11 provide information, you know that it's a good idea,  
12 from an investigative standpoint, to take steps to  
13 corroborate the information that that individual would  
14 be providing, correct?

15 A. Certainly.

16 Q. And, the reason for that is that you know through  
17 your experience that these aren't often the most  
18 trustworthy individuals, correct?

19 A. At times, certainly.

20 Q. I mean, these are the types of individuals, I  
21 mean, out committing crimes in our communities, correct?

22 A. They're seated at the table for a reason.

23 Q. Yeah.

24 These are the type of individuals -- speaking  
25 about individuals like Drowsy, right?

1           Because Drowsy is not in this courtroom right  
2 now, correct?

3           A.    Right.

4           Q.    So we're talking about Drowsy, right?

5           A.    Sure.

6           Q.    Okay.

7           A.    Sure.

8           Q.    Now, and Drowsy is the type of individual that  
9 you have to take precautions with, because you know  
10 through your experience that he's not the type of person  
11 you would consider trustworthy, correct?

12          A.    Sir, I work for the FBI. No one is trustworthy.

13          Q.    But particularly when you're dealing with people  
14 like Drowsy -- because I think you testified on direct  
15 that you made efforts to corroborate what he was saying,  
16 correct?

17          A.    Always. Do that with every person who gives us  
18 information.

19          Q.    You want to make sure he's not spinning tales,  
20 correct?

21          A.    Certainly.

22          Q.    So you take steps to verify what he is saying,  
23 correct?

24          A.    Yes, sir.

25          Q.    And that's one of the reasons why you wanted to

1 make these recordings, correct?

2 A. One of the reasons, yes, sir.

3 Q. You weren't prepared just to take Drowsy's word,  
4 correct?

5 A. No.

6 Q. So -- and when you made these recordings -- the  
7 first recording was made on September the 30th, correct?

8 A. Yes, sir.

9 Q. And that was a meeting -- well, you understood it  
10 to be a meeting between Drowsy and some other  
11 individuals, correct?

12 A. Right; other gang members, yes, sir.

13 Q. Well, at that point in time did you know they  
14 were gang members that he was meeting with?

15 A. Based on the names that he provided, as well --  
16 of the people he believed were going to be -- people who  
17 were going to be there, yes, we --

18 Q. So, is it fair to say that on September 30th,  
19 when you gave him this recording device, you were  
20 relying exclusively on what Drowsy told you about the  
21 identity of these individuals? Correct?

22 A. The identity of the people at the meeting?

23 Q. Yes.

24 A. I wouldn't say exclusively, simply because the  
25 names he provided were known to law enforcement. So,

1 that was a -- that was a semblance of corroboration  
2 right there.

3 In addition to that, law enforcement approached  
4 the intended victim of this murder, and he indicated he  
5 was well aware --

6 Q. I don't --

7 A. -- of the green light.

8 Q. -- want you to tell us what he said, because that  
9 would be impermissible; but I think I understand your  
10 answer.

11 You had a source, other than just Drowsy, about  
12 the identity of these individuals who were going to be  
13 at the meeting, correct?

14 A. Yes, sir.

15 Q. So you were able to confirm that these other  
16 participants in this meeting, in fact, were gang  
17 members, correct?

18 A. Yes, sir.

19 Q. Or at least you believed that on September  
20 the 30th, correct?

21 A. Yes, sir.

22 Q. And, you were not in the room during this  
23 meeting, correct?

24 A. Correct.

25 Q. And, no one else from law enforcement was in the

1 room during this meeting, correct?

2 A. Correct.

3 Q. Before that time, before September 30th, had you  
4 ever heard the voices of any of the participants in this  
5 meeting, other than Drowsy? You, yourself?

6 A. I had not, no.

7 Q. So, is it fair to say that when you listened to  
8 the recordings on September the 30th, you, yourself,  
9 just based on your own personal knowledge, could not  
10 identify who those participants were?

11 A. That's correct.

12 Q. And, by the way, do you speak Spanish?

13 A. I do not.

14 Q. And, this meeting was among a group of  
15 individuals who were speaking in Spanish, correct?

16 A. Yes, sir.

17 Q. A language that is unknown to you, correct?

18 A. Correct.

19 Q. So, after you met with Drowsy on September  
20 the 30th, correct, it was Drowsy who identified those  
21 voices for you, correct?

22 A. Yes, sir.

23 Q. And, if Drowsy mistakenly identified any of those  
24 voices, you would have no way to contradict that,  
25 correct?

1           A. Unless he made such a mistake that it was obvious  
2 it was two different voices, I would say that's correct.

3           Q. Other than that, you would have to just rely on  
4 what Drowsy is saying, correct?

5           A. At that moment, yes.

6           Q. And, you would --

7           A. For me, personally. I can't speak to what other  
8 law enforcement officers did later, but for me  
9 personally that day, yes, that's correct.

10          Q. Well, Agent, for the rest of your testimony here  
11 today, I want you to rely on that experience that you  
12 told us that you received training at the FBI Academy.  
13 Remember you told the jury that you were trained to just  
14 speak to what you know, correct?

15          A. Yes, sir.

16          Q. So I'm not asking about what any other agent may  
17 have known, correct?

18                You understand that?

19          A. I understand that.

20          Q. You understand I'm only asking you about what you  
21 know, correct?

22          A. Always.

23          Q. All right.

24                So, on September 30th, when you listened to these  
25 recordings, you were relying on what Drowsy told you

1 about who was speaking at the meeting, correct?

2 A. Yes, sir.

3 Q. And, I think you've already said that if Drowsy  
4 mistakenly identified any of the voices, you would not  
5 be in a position to challenge that, correct?

6 A. I would not, no.

7 Q. And if Drowsy purposely misidentified any of the  
8 voices, again, you would not be in a position, yourself,  
9 to challenge it, correct?

10 A. Not that night, no, sir.

11 Q. And if Drowsy told you what the other speakers  
12 were saying, again, since you don't know Spanish, you  
13 couldn't be able to confirm or deny what he was saying,  
14 correct?

15 A. Me, myself? No, sir.

16 Q. You would just be relying on what Drowsy told  
17 you, correct?

18 A. No, sir -- well, that particular night? Yes,  
19 sir.

20 Q. September 30th.

21 A. September 30th, yes, sir.

22 Q. Now, at -- on September 30th, at this point in  
23 time, did you know Drowsy, the individual you identified  
24 in Government's Exhibit 86-A, was a convicted felon?

25 A. Yes, sir.

1 Q. Did you know he was a professed gang member?

2 A. Yes, sir.

3 Q. Did you know how many times he had been convicted  
4 of felonies?

5 A. At the time I believe so, yes, sir.

6 Q. Now, turning your attention to October 1st, that  
7 recording, the one that was done earlier in that day, do  
8 you remember that recording?

9 A. I do.

10 Q. Now, was that a phone conversation or was that a  
11 physical meeting?

12 A. Phone conversation.

13 Q. That was a phone conversation.

14 A. Uh-huh.

15 Q. Were you listening in on that phone conversation?

16 A. I was.

17 Q. And, again, was that phone conversation in  
18 Spanish?

19 A. It was.

20 Q. Was Drowsy a participant in that phone  
21 conversation?

22 A. He was.

23 Q. Were there other voices you heard on that phone  
24 conversation?

25 A. Multiple.



1 Q. Had you heard any of those other voices before  
2 October 1st?

3 A. I had not, no, sir.

4 Q. Is it fair to say that when you were listening to  
5 those -- that phone conversation on October 1st, you had  
6 no independent way, yourself, to identify who the  
7 participants were?

8 A. Myself? No.

9 Q. At that point in time, is it not true that you  
10 were relying -- on October 1st -- on what Drowsy told  
11 you as to who the participants were?

12 A. Not completely, in that -- and my -- my answer to  
13 you a minute ago with respect to independently verifying  
14 the voices, I couldn't do that. However, I knew the  
15 phone number of the individual who he called on that --

16 Q. Well --

17 A. -- call.

18 Q. -- isn't it more accurate to say that you knew  
19 the phone call that was known to be used by this other  
20 individual? Correct?

21 A. While he was in jail, yes.

22 Q. Because, you didn't actually -- at that point in  
23 time, had you researched that phone number to describe  
24 who the -- who it was assigned to, what subscriber?

25 A. No, not from the telephone company, no.

1 Q. Right.

2 You --

3 A. Generally, they're in a fake name anyway.

4 Q. Well, I understand that, right. But again, I  
5 want to remind you about the training that you received  
6 at the academy, okay?

7 A. Well, I'm also sworn to tell the whole truth,  
8 sir, which is what I'm doing.

9 Q. I understand.

10 But I want you to answer my questions relative to  
11 what you know. Okay?

12 A. I do know they use fake names.

13 Q. I don't --

14 THE COURT: We will resume in 15 minutes.  
15 We will --

16 MR. JENKINS: Thank you.

17 THE COURT: -- take the afternoon recess at  
18 this time.

19 Please do not discuss the case, ladies and  
20 gentlemen.

21 (Court recessed at 3:32 p.m. and reconvened  
22 at 3:47 p.m.)

23 THE COURT: You can bring our jury out,  
24 please. Thank you.

25 (Jury present.)

1 THE COURT: You may be seated.

2 All right, Counsel, you may proceed.

3 MR. JENKINS: Thank you, Your Honor.

4 CROSS-EXAMINATION (Continued)

5 BY MR. JENKINS:

6 Q. Special Agent Hicks, the -- the recording that  
7 was done on October the 1st, earlier in the day, the  
8 first recording of that day, I believe you -- when we  
9 left off, you were telling the jury that that was a  
10 telephone call, correct?

11 A. Yes, sir.

12 Q. And, you were listening in as that call was being  
13 made, correct?

14 A. Uh-huh.

15 Q. And, that call was in Spanish, correct?

16 A. It was.

17 Q. And, one of the sources of information you had  
18 concerning who was on that call with Drowsy was, in  
19 fact, Drowsy, correct?

20 A. Correct.

21 Q. And, again, you don't speak Spanish, correct?

22 A. I do not.

23 Q. And when you got off -- when that call concluded,  
24 did you have conversations with Drowsy about the  
25 contents of that conversation? Correct?

1           A.    I did.

2           Q.    And, Drowsy explained to you what was said,  
3 correct?

4           A.    He did.

5           Q.    And it was Drowsy who explained to you at that  
6 point in time -- well, let me ask you this: Was there  
7 anyone else in law enforcement with you and Drowsy at  
8 that point?

9           A.    During the phone call? No. They were standing  
10 outside the vehicle, but not in the vehicle.

11          Q.    And, so, at that point in time, it was Drowsy who  
12 also told you who was on the phone, correct?

13          A.    Correct.

14          Q.    Now, on --

15          A.    As much as he knew.

16          Q.    -- the third conversation, the third recording,  
17 that occurred later on in the evening of October 1st --

18          A.    Right.

19          Q.    -- was this a telephone call or an in-person  
20 meeting?

21          A.    In-person meeting.

22          Q.    And, where did this occur?

23          A.    He was picked up by vehicle with three other  
24 individuals in it.

25          Q.    That's the one that led to -- or terminated at

1 the time of the traffic stop, correct?

2 A. Correct. That's right.

3 Q. And, that car that -- it was being driven by  
4 someone that you came to know by the street name of  
5 Demente, correct?

6 A. I didn't observe him driving, but that was my  
7 understanding, yes.

8 Q. And, in fact, the car was registered to that same  
9 individual. It was his car, correct? Demente?

10 A. Yes.

11 Q. It wasn't Greñas' car, correct?

12 A. Not to my knowledge, no.

13 Q. And you -- there was a search done of the  
14 vehicle, correct?

15 A. Yes.

16 Q. And, there was certain items that were discovered  
17 in the vehicle. I believe you've identified them as  
18 Government's Exhibits 30 through 35, correct?

19 A. I don't recall the exact numbers, but, I believe  
20 that's correct.

21 Q. And, in your training, did you receive any  
22 training at the FBI Academy or in any of your experience  
23 as a law enforcement officer on the collection of  
24 physical evidence?

25 A. Yes.

1 Q. And, as part of your training, you learned that  
2 it's very important that you take steps to preserve the  
3 physical evidence in the manner in which it is  
4 discovered, correct?

5 A. Yes.

6 Q. And, you take precautions by using gloves and  
7 things of that nature, correct?

8 A. Yes.

9 Q. And you have nice little plastic bags that you  
10 put the evidence in and seal it up real quick, correct?

11 A. Yes.

12 Q. Or as soon as practically possible, correct?

13 A. Right.

14 Q. And, that's because you've learned that one of  
15 the things that law enforcement may want to do with  
16 those items is to perform certain examinations on those  
17 items, correct?

18 A. At times, yes, sir.

19 Q. For example, they may want to examine to see  
20 whether or not DNA is found on the item, correct?

21 A. Certainly.

22 Q. Because that could be very important to law  
23 enforcement, to identify who may have come in contact  
24 with a particular item, correct?

25 A. Yes, sir.

1 Q. So, if you, in law enforcement, want to know, for  
2 example, who may have handled what is depicted in  
3 Government's Exhibit 86-D --

4 MR. JENKINS: If I can have that shown for  
5 the jury, 86-D.

6 BY MR. JENKINS:

7 Q. -- this shotgun, here, if you wanted to know --  
8 or gain some evidence as to who may have handled that,  
9 one of the things you may do is submit it to the FBI  
10 Forensic Lab for DNA testing, correct?

11 A. Possibly.

12 Q. You also possibly could even have it examined for  
13 fingerprints, correct?

14 A. Sure.

15 Q. Because sometimes you find fingerprints on guns,  
16 correct?

17 A. You do.

18 Q. And you also might submit it for hair, fiber  
19 analysis, correct?

20 A. Any number of examinations.

21 Q. All with the driven goal to try to gain  
22 information as to who may have been in physical  
23 possession of that shotgun, correct?

24 A. If that's what you're looking for, yes, sir.

25 Q. Because, again, we don't want to just rely on

1 Drowsy, correct?

2 A. Correct.

3 Q. You want corroboration for what Drowsy has told  
4 you, correct?

5 A. Sure.

6 Q. Because he's the convicted felon, correct?

7 A. Right.

8 Q. He's the admitted gang member, correct?

9 A. Yes.

10 Q. Now -- and the questions I asked you about those  
11 forensic examinations, that also would apply to the  
12 first machete that was discovered, correct?

13 A. Yes.

14 Q. And, it would also apply to the second machete  
15 that was discovered, also, correct?

16 A. Certainly.

17 Q. It would also apply to those shell casings that  
18 you found, correct?

19 A. Yes.

20 Q. And, even that notebook that you found, you can  
21 do examinations on those, also, correct?

22 A. Certain pieces, certain types of -- of  
23 examinations, yes, sir.

24 Q. And, for the results of those examinations, would  
25 it be fair to say that you don't have to worry about



1 whether or not they're untrustworthy? Would that be  
2 fair to say?

3 A. I don't understand your question.

4 Q. Let me ask you this: Fingerprints don't lie,  
5 correct?

6 A. Not to my knowledge, no, sir.

7 Q. DNA test results don't lie, correct?

8 A. No, sir.

9 Q. Hair and fiber analysis, they don't lie, correct?

10 A. That's not a hundred percent true, but --

11 Q. Well, in your training, you've learned they are  
12 what they are, correct?

13 A. They are.

14 Q. Because they don't have felonies, correct?

15 A. No.

16 Q. They don't have motives, correct?

17 A. No motives.

18 Q. They don't have incentives to lie, correct?

19 A. Last time I checked, no, sir.

20 Q. They don't have plea agreements with the United  
21 States Attorney Office?

22 A. No, sir.

23 Q. And they don't get any benefits by giving any  
24 particular results, correct?

25 A. No, sir.

1 Q. They are what they are, correct?

2 A. Yes, sir.

3 Q. Let me ask you, as it relates to what's depicted  
4 in Government's Exhibit 86-D --

5 MR. JENKINS: If we could have that back up  
6 on the screen.

7 BY MR. JENKINS:

8 Q. Let me focus your attention on the shotgun. Do  
9 you know if any forensic analysis was done on that  
10 shotgun?

11 A. I do not, because I transferred responsibility of  
12 the investigation to another individual not long after  
13 this evening, because I was involved in another large  
14 gang investigation.

15 Q. One of the things that they taught you at the  
16 academy, in terms of testifying, is to answer the  
17 question that's asked, right?

18 A. Answer it as a whole, yes, sir.

19 Q. And, the question I posed to you is whether or  
20 not you know whether this --

21 A. I have no idea.

22 Q. The answer is you have no idea, correct?

23 Now, is that also true about this machete that's  
24 depicted in Government's Exhibit 86-D?

25 A. True. It may or may not have been submitted. I

1 don't know.

2 Q. Is that also true about the second machete that  
3 was recovered?

4 A. Yes, sir.

5 Q. Is that also true about the bullets that you  
6 testified in Government's Exhibit 34?

7 A. Yes, sir.

8 Q. Is that also true about the notebook that was  
9 identified as Government's Exhibit 35?

10 A. Yes, sir.

11 Q. Now, you testified with respect to Government's  
12 Exhibit 35 --

13 MR. JENKINS: Can we get that notebook?

14 BY MR. JENKINS:

15 Q. Do you have the notebook with you, Special Agent?

16 A. I have nothing, sir.

17 Q. Let's see if we can go through that page that you  
18 identified, that I believe you testified shows dues that  
19 are being paid and owed.

20 While you're doing that, Special Agent, let me  
21 ask you this: You testified that you don't speak  
22 Spanish, correct?

23 A. I do not.

24 Q. Do you read it?

25 A. No, sir; other than just very common words that

1 many people know, no, sir.

2 Q. And what's written in that book that you  
3 identified as a tally of dues owed and to be paid,  
4 that's all written in Spanish, correct?

5 A. Certain pieces, yes, sir.

6 Q. And, there's nothing on there in English that  
7 says that this is a membership dues list, correct?

8 A. No, sir. But the Spanish that I do know,  
9 certainly appears to be dues, month to month, name by  
10 name of the --

11 Q. You see month to month and you see name by name.  
12 Do you see the Spanish equivalent for the word  
13 "dues"?

14 A. No, sir.

15 Q. Do you see the Spanish word for the equivalent,  
16 "members"?

17 A. Not to my knowledge.

18 Q. Do you see the Spanish equivalent for the word  
19 "homeboys"?

20 A. No, sir.

21 Q. You believe that this is a listing of gang  
22 members, based in part on what Drowsy told you, correct?

23 A. In part.

24 Q. You believe that this is a list of dues, based on  
25 what Drowsy told you, correct?

1           A.    I don't believe I ever spoke to him about this.

2           Q.    About it being --

3           A.    About this notebook.

4           Q.    About that notebook?

5           A.    I don't believe that I did.

6           Q.    Your own personal knowledge, Agent, you don't  
7 know whether or not that's a listing of gang members,  
8 based on your own personal knowledge.

9           A.    Yes, sir, actually I do.

10          Q.    How do you know that?

11          A.    Because during this investigation and prior to  
12 this investigation, law enforcement keeps databases of  
13 reports from various different agencies --

14                   MR. CONTE: We would object, Your Honor. I  
15 think it's not a --

16                   THE COURT: Well, personal knowledge and  
17 what you read are two different things. Objection  
18 sustained.

19 BY MR. JENKINS:

20          Q.    Your personal knowledge.

21          A.    Could I have you rephrase the question, in  
22 that --

23          Q.    Let me ask you this --

24          A.    Do I know them personally?

25                   No, I don't know these individuals personally.

1 Is that what you're driving at?

2 Q. Agent, the -- the machete that's depicted in  
3 Government's Exhibit 86-D, I think you identified that  
4 as one that you recognize because you describe it as  
5 having rust on the blade, correct?

6 A. Along with other items, yes, sir.

7 Q. And, also the fact that it has certain dings in  
8 it, correct?

9 A. Yes, sir.

10 Q. It certainly wasn't, in your opinion, sharpened,  
11 correct?

12 A. I don't know. I didn't feel the blade.

13 Q. You didn't feel the blade.

14 But when you examined it up here on the witness  
15 stand, was it in the same condition that it was on the  
16 night in which you discovered it?

17 A. It appeared to be.

18 Q. As you examined it on the witness stand when you  
19 were being questioned by Assistant U.S. Attorney  
20 Campbell, did it appear to be sharpened to you at that  
21 time?

22 A. It appears to be sharp enough. I can't really  
23 qualify -- quantify.

24 Q. Agent Hicks, the items were found not in any one  
25 individual's physical possession, correct?

1       A.    The weapons weren't. They were in the trunk.  
2    The notebook was in one particular spot within the  
3    vehicle nearest to one of the individuals in the  
4    vehicle. But, as far as the weapons, no, sir.

5       Q.    That notebook that you mentioned, the handwriting  
6    contained in that notebook, you, yourself, you don't  
7    know who wrote in that notebook, correct?

8       A.    I didn't watch them do it, no.

9       Q.    You didn't have any handwriting exams done,  
10   either, did you?

11      A.    I can't answer that.

12      Q.    The item that was -- the items that were found in  
13   the trunk, they weren't -- as soon as you opened up the  
14   trunk, is it fair to say you could not see those items?

15      A.    Initially, that's correct.

16      Q.    In fact, the items were concealed, correct?

17      A.    Correct.

18      Q.    They were underneath some clothing, cloths?  
19           What were they underneath?

20      A.    Are you talking about the weapons?

21      Q.    Yes.

22      A.    They were under the lining of the trunk,  
23   concealed up under the lining, all the way into the  
24   trunk, up against the back seat, basically, under the  
25   rear deck of the vehicle.

1 MR. JENKINS: Court's indulgence.

2 (Pause.)

3 Your Honor, I believe that's all the  
4 questions I have.

5 THE COURT: All right.

6 CROSS-EXAMINATION

7 BY MR. SALVATO:

8 Q. Good afternoon, Special Agent. My name is Frank  
9 Salvato and I represent Christian Lemus Cerna.

10 A. How you doing, sir?

11 Q. I'm doing okay.

12 Sir, you made a comment during Rob- --  
13 Mr. Jenkins' cross-examination that I want to explore  
14 for a second. You said in an offhand manner that  
15 they're sitting at the table for a reason. Do you  
16 recall saying that?

17 A. I do.

18 Q. Okay. You understand that the indictment is not  
19 evidence in this case. You understand that, right?

20 A. The indictment? No, sir, that's right.

21 Q. All right. And, you understand that there have  
22 been cases, even FBI investigations, where people have  
23 sat at the table for no good reason. In fact, they've  
24 been found guilty and later on exonerated, true?

25 A. I'm aware of things like that, yes, sir.



1 Q. All right. So, just the mere fact of where a  
2 person is sitting or they're sitting at a -- where  
3 they're sitting in the courtroom, that's -- that's not a  
4 reason, right?

5 It's not a reason that they're guilty; is that  
6 what you're trying to say?

7 A. No, sir. If I made that statement as a general  
8 sense, that everyone sits -- who sits at the table is  
9 guilty, then that may be something to take umbrage with.  
10 But my specific thing was knowledge that I specifically  
11 have about some of these individuals.

12 Q. You said they're sitting at the table for a  
13 reason. But sometimes there's no good reason. And, in  
14 fact, sometimes people are not guilty or later on are  
15 even exonerated, true?

16 A. I have heard of those instances yes, sir.

17 Q. And in fact, FBI cases, correct?

18 A. I would assume so.

19 Q. I want to back up to the beginning of a couple of  
20 things you said, just about the procedure of using an  
21 informant.

22 A. I'm sorry, using what?

23 Q. An informant.

24 A. Understood.

25 Q. All right. When you radio somebody up or put a

1 wire on them to record a meeting or an event, I think  
2 you mentioned in your direct that you give them certain  
3 instructions, correct?

4 A. Yes, sir.

5 Q. All right. And, what are those instructions that  
6 you give your source, your informant?

7 A. They vary with every instance. In general, the  
8 ones that are sort of utilized across the board are  
9 safety instructions. We typically give them some code  
10 word that, if we are utilizing a transmitter with that  
11 individual, that we can hear the transmitter, whatever  
12 the code word is, means: Danger, please come help me.

13 And that's different for each person.

14 Q. Do you give your source or your informant  
15 instructions about using illegal narcotics?

16 In other words, are your sources or the person  
17 that's wearing a wire for the FBI allowed to use  
18 narcotics?

19 A. No.

20 Q. Is that part of the instructions?

21 A. Again, it -- not across the board. If we have a  
22 reason to believe that they are -- there's going to be a  
23 drug transaction, then, certainly, that may be one of  
24 the instructions.

25 Q. Okay. And you're familiar with that, in your

1 training?

2 A. I've done it many times.

3 Q. So, you've given somebody an instruction that,  
4 "Hey, don't use narcotics during this encounter,"  
5 correct?

6 A. I have.

7 Q. All right. And the reason being that the use of  
8 the narcotic may make your informant unreliable, true?

9 A. Primarily because it's illegal.

10 Q. Right.

11 So, your informant shouldn't be doing illegal  
12 things like using narcotics, true?

13 A. True.

14 Q. And that may also impair their ability to recall  
15 the events, true?

16 A. Possibly, yes. It certainly depends on which  
17 narcotic you're talking about.

18 Q. All right. Well, you don't want your informant  
19 at a meeting or something like that, sitting around  
20 smoking a marijuana joint, true?

21 A. I would prefer him not to, yes.

22 Q. And, in fact, that's against the -- against the  
23 rules, true?

24 A. It is.

25 Q. For good reason, yes?

1 A. True.

2 Q. The rule exists for a good reason?

3 A. True.

4 MR. SALVATO: Mr. Toliver, can I grab that  
5 notebook, Exhibit 35, please?

6 May I retrieve the exhibit so I can ask  
7 questions from the exhibit, Your Honor?

8 THE COURT: Here, take my copy of it.

9 MS. MARTINEZ: Your Honor, I have a copy.  
10 Your Honor can keep your own copy.

11 THE COURT: Okay.

12 MR. SALVATO: It doesn't matter.

13 BY MR. SALVATO:

14 Q. Sir, you indicated on what, page 56, this is  
15 where what you allege were some names and some numbers  
16 with dues; is that right?

17 A. I don't have page numbers in -- in the original  
18 copy, but, I -- I mean, as a matter of general sense,  
19 yes.

20 Q. And, there is also a number of other items in  
21 that notebook, correct?

22 A. Yes, there's --

23 Q. Looking at the beginning pages, there's shapes,  
24 containers, vocabulary words, true? Just looking  
25 through the first ten pages or so.

1 A. Yes, sir.

2 Q. Okay. There's words about vocabulary for  
3 different seasons, correct?

4 A. Correct.

5 Q. Information about prepositions, correct?

6 A. Appears to be.

7 Q. Pictures of the different seasons: winter,  
8 summer, fall, spring, true?

9 A. I believe so, yes, sir.

10 Q. There's also other information about plants and  
11 other very innocuous information, true?

12 A. Yes, sir. It appears to be utilized for school  
13 work, in addition.

14 Q. And, I think you responded to Mr. Jenkins'  
15 questions that you don't know who wrote that chart on  
16 that page, 56, that the jury has seen. I hope I have  
17 the page number right, but I believe it was 56.

18 A. I don't -- I mean, I wasn't there when it was  
19 written, so can I swear to it? No, sir.

20 Q. And, you can't tell the jury that the same person  
21 who may have written the notations about the schoolwork  
22 is the same person that may have written the notations  
23 about page 56, true?

24 A. I have no testimony one way or the other on that.

25 Q. Okay. And you haven't, to your knowledge, sent

1 that notebook for any type of examination or comparison  
2 or anything along those lines, true?

3 A. I did not. I can't testify to what anyone else  
4 may or may not have done.

5 Q. Are you aware of any law enforcement officer that  
6 may have sent that notebook out for comparison?

7 A. I have no knowledge of it, no, sir.

8 Q. And there's some pictures, I think you said, in  
9 the back, that are separated from the school information  
10 that I think you identified in your direct as common  
11 graffiti, true?

12 A. For MS-13, yes, sir.

13 Q. And, you can't tell the ladies and gentlemen of  
14 this jury whether that, again, the same person who may  
15 have drawn those -- that common graffiti, is the same  
16 person that did the chart or even the same person that  
17 did the schoolwork, true?

18 A. No, sir.

19 Q. And there's no name attached to the common  
20 graffiti, right?

21 There's no "Picture by" -- X, Y, Z, or anything  
22 like that?

23 A. I don't believe the artist signed his work, no,  
24 sir.

25 Q. All right.

1           And you indicated the notebook was found in the  
2 body of the car, not in the trunk, true?

3           A.    Correct.

4           Q.    Front seat or back seat?

5           A.    Back seat.

6           Q.    And, when you stopped the vehicle, my client,  
7 Mr. Cerna, was not in the vehicle, correct?

8           A.    No, sir.

9           Q.    Okay.

10           MR. SALVATO: Thank you, Your Honor. That's  
11 all I have.

12           (Pause.)

13           THE COURT: Redirect?

14           MR. CAMPBELL: Briefly, Your Honor.

15                       REDIRECT EXAMINATION

16           BY MR. CAMPBELL:

17           Q.    Special Agent Hicks, has Drowsy ever operated as  
18 a confidential informant or a CHS, a confidential human  
19 source, by the FBI?

20           A.    No, sir.

21           MR. CONTE: Objection, outside the scope.

22           THE COURT: Overruled.

23           THE WITNESS: No, sir, he was not.

24           BY MR. CAMPBELL:

25           Q.    Did he ever receive any benefits from the FBI or

1 law enforcement?

2 A. To my knowledge, no, sir.

3 Q. Earlier, one of the defense counsel, I believe it  
4 was Mr. Jenkins, focused his questions on suggesting  
5 that you relied solely on Drowsy's reporting. What, if  
6 anything, did you do to corroborate his reporting?

7 A. One of the things we did was we went and  
8 approached the intended victim, in order to ensure that  
9 he did not go to class that night. He was scheduled to  
10 be at a night class at the high school, along with  
11 the -- the lacrosse game that was going on there. So we  
12 wanted to remove him from the situation, have him not  
13 show up that night.

14 He indicated to us that he was very well aware --

15 MR. JENKINS: Objection.

16 THE COURT: Excuse me. Excuse me.

17 THE WITNESS: I'm sorry.

18 THE COURT: You can't tell us what he said.  
19 That would be hearsay. Objection sustained.

20 THE WITNESS: Understood.

21 BY MR. CAMPBELL:

22 Q. What else did you do to corroborate his  
23 reporting?

24 A. In addition to utilizing -- so for all of the  
25 names and all of the information that he gave us with



1 respect to the gang and members and things of that  
2 nature, we corroborated the names, as well as any phone  
3 numbers that were given --

4 MR. JENKINS: Objection, Your Honor,  
5 nonresponsive. He's talking about what "we" did. I  
6 believe the question was what he did.

7 THE COURT: Correct.

8 Personal knowledge, please.

9 THE WITNESS: Understood. Sorry, sir.

10 Either I searched those names and/or phone  
11 numbers in the FBI database, and/or other databases --

12 MR. JENKINS: Objection, Your Honor. That  
13 calls for hearsay. He would only know that based on  
14 someone telling him.

15 THE COURT: Exactly, but he --

16 If you recall what names you searched for,  
17 if you can tell us that.

18 THE WITNESS: Yes, sir. The names that were  
19 provided were Demente, along with his real name, Pedro  
20 Romero Cruz, AKA Payaso, who was supposedly in prison.  
21 I verified through the state prison system that he was,  
22 in fact, incarcerated in prison, and the prison that was  
23 reported to me.

24 The phone number that was given to us, we  
25 verified --

1 MR. JENKINS: Objection, again, Your Honor.

2 THE WITNESS: -- I verified that the phone  
3 number was, in fact, a working phone number utilized by  
4 a particular phone company, by calling the phone company  
5 and verifying that.

6 BY MR. CAMPBELL:

7 Q. What was your role in the investigation after  
8 October 1st?

9 A. Shortly thereafter, because I was involved in  
10 another large gang case -- the case appeared that it was  
11 going to take off into various directions, the decision  
12 was made by myself, as well as my supervisor, that I  
13 could not manage both potentially large cases. So, the  
14 case was then assigned shortly thereafter to Special  
15 Agent Fernando Uribe.

16 Q. I believe it was defense counsel who earlier on  
17 cross-examination focused on the recovery of the  
18 physical evidence, the weapons, the sawed-off shotgun,  
19 the two machetes, the shotgun shells, the 40-caliber  
20 ammunition that was recovered by you and other law  
21 enforcement officers that evening.

22 I think he asked you whether or not that was  
23 submitted, if you had specific knowledge that it was  
24 submitted to the lab.

25 You just testified that you moved on from this

1 investigation. As standard procedure, what does the FBI  
2 do with physical evidence such as that?

3 A. Once the evidence is packaged and included into  
4 the FBI's --

5 MR. JENKINS: Objection, Your Honor. Can we  
6 approach, Your Honor?

7 THE COURT: Well --

8 MR. JENKINS: I don't want to get into a  
9 speaking objection.

10 THE COURT: Okay. All right.

11 (Thereupon the following side-bar conference  
12 was had:)

13 MR. JENKINS: Your Honor, I would object.  
14 Your Honor, throughout the course of this trial, the  
15 Court has admonished all attorneys to direct their  
16 questions to focus in on this case.

17 This witness has already testified that  
18 after October 1st, he wasn't involved and that he  
19 doesn't know what was done with those -- with those  
20 items.

21 For the government counsel now to be able to  
22 solicit from him about what some general FBI practice  
23 is, I find to be irrelevant to this case.

24 MR. CAMPBELL: Your Honor, Mr. Jenkins on  
25 cross-examination focused on his experiences as an

1 agent, and asked him specifically about whether or not,  
2 in his experience, these types of weapons were  
3 fingerprinted or analyzed for DNA.

4 I should be able to ask him on redirect  
5 whether or not, from his experience, these types of  
6 weapons were submitted to the FBI Lab.

7 THE COURT: My recollection is he asked:  
8 Were they processed for those things.

9 And he asked -- and he didn't know.

10 So I'm going to sustain the objection.

11 I understand why you want to ask about  
12 standard practices, but I want to focus just on what he  
13 did in this case, personal knowledge only.

14 Objection sustained.

15 MR. CAMPBELL: Very well.

16 (Thereupon, the sidebar conference was  
17 concluded.)

18 THE COURT: Ready?

19 You may proceed.

20 BY MR. CAMPBELL:

21 Q. Agent Hicks, in addition to the recovery of the  
22 shotgun and the machete and the shotgun shells from the  
23 car, you testified about the recovery of that notebook.  
24 With the assistance of the court security officer, can I  
25 ask you to look at that notebook one more time?

1       A. Is the copy sufficient, or is the original  
2 necessary?

3       Q. We will have you look at the original --

4       A. Okay.

5       Q. -- please.

6             Please direct your attention to the cover of that  
7 notebook.

8       A. Yes, sir.

9       Q. Can you read what the name on the cover of that  
10 notebook is?

11       A. "Christian" -- sorry. The bag's in the way.  
12 "Christian Jesus Lemus Cerna."

13             MR. CAMPBELL: No further questions, Your  
14 Honor.

15             THE COURT: Come back up just for a second.  
16 Come back up just for a second.

17             (Thereupon, the following side-bar  
18 conference was had:)

19             THE COURT: I was bothered by this agent's  
20 comment that there's a reason that's why they're sitting  
21 here. And I'm intending to say something about it, to  
22 say what I said at the beginning of the case, that  
23 they're presumed to be innocent, and to say that -- the  
24 fact is, I've had MS-13 cases where two defendants were  
25 acquitted in a capital case. So, the fact that they're

1 sitting here means nothing. I want to say that they are  
2 presumed to be innocent. The fact that they are here  
3 does not mean one thing until the government proves them  
4 guilty.

5 MR. CAMPBELL: Your Honor, may I be heard on  
6 this briefly?

7 THE COURT: Yes.

8 MR. CAMPBELL: I certainly understand Your  
9 Honor's point, and I don't objection to the instructions  
10 or the Court's commentary.

11 This is a very experienced agent, and he, on  
12 redirect, clearly, he explained that the distinction, he  
13 wasn't focused on indicting them. He was focused, that  
14 he knew certain of these individuals in the court, and  
15 that's why he said they were at the table.

16 THE COURT: That's fine. But I'm going to  
17 say what I said. Thank you.

18 (Thereupon, the side-bar conference was  
19 concluded.)

20 THE COURT: Ladies and gentlemen, during the  
21 course of this witness's testimony he made an  
22 observation about there's a reason why these individuals  
23 are here.

24 You've heard me say many times, in the jury  
25 selection and the beginning of this trial, each

1 individual is presumed to be innocent.

2 The fact they're here does not mean one  
3 thing until the end of the case and you've heard all the  
4 evidence.

5 And he doesn't have any ability to tell you  
6 why they're here at all.

7 And, yes, there have been individuals who  
8 have been tried in this court for MS-13 offenses who  
9 have been acquitted in front of me.

10 So the fact that they're here means nothing  
11 at all until you hear the evidence. Thank you.

12 You can step down, sir.

13 THE WITNESS: Yes, sir.

14 (Thereupon, the witness withdrew from the  
15 stand.)

16 THE COURT: Next witness.

17 MS. MARTINEZ: Government calls Liliana  
18 Portwine.

19 (Witness sworn.)

20 THE WITNESS: I do.

21 THEREUPON, LILIANA PORTWINE, having been  
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MARTINEZ:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Could you please state your full name and spell  
3 your name for the record.

4 A. Sure. My name is Liliana Portwine,  
5 L-i-l-i-a-n-a, P-o-r-t-w-i-n-e.

6 Q. Ms. Portwine, where do you work?

7 A. I work at the FBI.

8 Q. What do you do at the FBI?

9 A. I am a contract language monitor.

10 Q. How long have you been a contract language  
11 monitor for the FBI?

12 A. For six years.

13 Q. What languages do you speak?

14 A. I speak Spanish and English.

15 Q. How long have you been speaking Spanish?

16 A. For my whole life.

17 Q. Where were you born?

18 A. I was born in Mexico.

19 Q. When did you come to the United States?

20 A. In 19- -- in 1975.

21 Q. How old were you when you came to the United  
22 States?

23 A. I was ten years old.

24 Q. And, how long have you been speaking English?

25 A. Since I was ten years old.



1 Q. Where did you work before you came to work for  
2 the FBI?

3 A. I worked at Stafford County Public Schools.

4 Q. And then, what did you do for Stafford County  
5 Public Schools?

6 A. I was a substitute teacher and I was also a  
7 translator/interpreter.

8 Q. In that position, as a teacher and as a  
9 translator/interpreter, did you use your Spanish skills?

10 A. I did.

11 Q. Can you tell the jury a little bit about that?

12 A. I would -- I would translate for the  
13 administrators and the parents regarding any issues or  
14 anything to do with a child's educational plans.

15 I would go to teacher/parent conferences.  
16 Sometimes I would -- there would be student testing, so  
17 I would do that to assess what their language in English  
18 was, what their skill was, what the skill level was.

19 Q. What countries were the students and the parents  
20 whom you translated for originally from?

21 MR. CONTE: Objection, relevance.

22 THE COURT: Relevance?

23 MS. MARTINEZ: It establishes her knowledge  
24 of Spanish generally and also Spanish spoken by people  
25 from certain countries.

1 THE COURT: Objection is overruled.

2 BY MS. MARTINEZ:

3 Q. What countries were the students and parents whom  
4 you translated for originally from?

5 A. Guatemala and El Salvador.

6 Q. How long did you work in that role?

7 A. Three to four years.

8 Q. Did you have -- prior to -- or other than your  
9 role in the schools and your job currently with the FBI,  
10 have you had other employment where you had opportunity  
11 to use your Spanish skills?

12 A. I did. I did have other employment that I used  
13 Spanish with.

14 Q. What employment was that?

15 A. It was a trucking company. It was actually a  
16 company that did a -- they wrote a directory for  
17 trucking companies. And I would have to call Mexican  
18 trucking companies and get information, detailed  
19 information so that the company would put it in the  
20 directory.

21 Q. And, what country -- I'm sorry. Did you say what  
22 country you were translating for?

23 A. Mexico.

24 Q. So, other than the jobs that you've already  
25 listed, have you had any other jobs in your lifetime

1 that required you to use your Spanish skills?

2 A. Yes, I did.

3 Q. What job is that?

4 A. There was another -- I used to work for the  
5 airlines, Pan American Airlines. I worked at the LA  
6 Airport and I used my Spanish skills there.

7 I also worked for Continental Airlines, at the  
8 international desk, and I used my Spanish skills there  
9 as well.

10 Q. Starting with Pan American, what did you do for  
11 Pan American Airlines?

12 A. I worked at the airport, at the terminal, and I  
13 would do anything from checking in luggage to going up  
14 to the gate and calling boarding gates; any -- any kind  
15 of job at the airport.

16 Q. And why did that require you to use your Spanish  
17 skills?

18 A. Many of our flights -- well some of our flights,  
19 they were going to South America and Central America.  
20 They wanted the announcements to be made in Spanish to  
21 be able to help the customers.

22 Q. What countries, specifically?

23 A. Guatemala, El Salvador, Argentina, Peru.

24 Q. And in your experience working for Pan American  
25 Airlines and in talking to customers flying on Pan

1 American Airlines, were there customers who were from  
2 those countries you just named?

3 A. Yes.

4 Q. Did you speak to them in Spanish?

5 A. I did.

6 Q. Were you able to effectively communicate?

7 A. I did.

8 Q. And understand them?

9 A. Yes.

10 Q. Okay. You also said you worked for Continental  
11 Airlines?

12 A. I did.

13 Q. What did you do for Continental Airlines?

14 A. International reservation desk agent. And  
15 Spanish calls were rerouted as well -- even if they were  
16 not international -- to my desk because I spoke Spanish.

17 Q. What countries were the Spanish speakers you  
18 would speak to from?

19 A. Several countries: Mexico, Guatemala, El  
20 Salvador, Costa Rica, any of the areas that we served.

21 Q. Were you able to understand these speakers in  
22 Spanish regardless of which country they were from?

23 A. I was able to, yes.

24 Q. Able to effectively translate for them?

25 A. Yes, I was.

1 Q. How long did you work for Continental Airlines?

2 A. Two years.

3 Q. How long did you work for Pan American Airlines?

4 A. Three years.

5 Q. All right. Now, going back to your current  
6 position, you said that you're a contract language  
7 monitor?

8 A. Correct.

9 Q. Have you been in that position your entire time  
10 at the FBI?

11 A. Correct.

12 Q. Okay. When the FBI hired you as a contract  
13 language monitor, did you have to take any sort of  
14 qualification in order to become a contract language  
15 monitor?

16 A. Yes. I had to have a test, written and verbal.

17 Q. And based on your written and verbal test, did  
18 you in fact qualify to be a contract language monitor  
19 for the FBI?

20 A. Yes, I did.

21 Q. And for what languages?

22 A. For Spanish.

23 Q. All right. So, what do you do at the FBI as a  
24 contract language monitor?

25 What are your duties?

1       A. I get recordings, and from those recordings I do  
2 translations. I get documents, and from those documents  
3 I translate the documents.

4               I also do -- go out with agents and do debriefs  
5 or interviews. Any type of communication between two  
6 parties, you know, Spanish, English, I am able to do  
7 that.

8       Q. Let's start with -- you said that you translate  
9 recordings; is that right?

10      A. That's correct.

11      Q. What kind of recordings?

12      A. Any kind of recordings, wire taps, body wires,  
13 any -- any -- any recording.

14      Q. When you say "wire tap," what do you mean?

15      A. That's where we -- where we listen on the phone,  
16 listen to phone calls as they're coming in or after the  
17 fact.

18      Q. When you work on a wire tap, what does that  
19 entail for you on a day-to-day basis?

20      A. That means that I go there and I sit and I listen  
21 and as I listen, I translate.

22      Q. And how many hours a day do you do that?

23      A. Eight hours a day.

24      Q. How many hours -- how many days a week?

25      A. Five days a week.

1 Q. How many wire taps have you worked on in your  
2 experience at the FBI where the primary language spoken  
3 on the wire was Spanish?

4 A. Many. Over ten.

5 Q. And, on a typical wire when you're assigned to a  
6 wire tap, how long do you typically work on that wire?

7 A. The -- most wires last about three months.

8 Q. And if you're working on a wire tap for three  
9 months, are you working 40 hours a week for three  
10 months?

11 A. Yes, that's correct.

12 Q. Listening to the Spanish language recordings the  
13 whole time?

14 A. Correct.

15 Q. During your time at the FBI and working on wire  
16 taps and translating other recordings, what countries  
17 have these speakers been from that you're listening to  
18 and translating?

19 A. They have been from Mexico. They have been from  
20 El Salvador, Guatemala, Cuba, Peru.

21 Q. And, are you approved within the FBI as a  
22 contract language monitor to translate Spanish to  
23 English for all of those countries, for speakers from  
24 all of those countries?

25 A. I am, yes.

1 Q. You also said that you translate in person. Can  
2 you tell us a little bit more about that?

3 A. Yes. Agents will call my supervisor and my  
4 supervisor will send me out on assignments, and I will  
5 either translate with the witness, family members,  
6 any -- anyone that needs the -- that needs me to  
7 translate.

8 Q. Do you translate spoken Spanish into spoken  
9 English?

10 A. Yes.

11 Q. Do you translate spoken English into spoken  
12 Spanish?

13 A. Yes.

14 Q. What experience, if any, do you have working on  
15 investigations that involve members or alleged members  
16 of the gang MS-13?

17 A. I have -- I have done a lot of work with MS-13.

18 Q. Remind me again, how long have you been with the  
19 FBI?

20 A. Six years.

21 Q. And how long have you been working on cases  
22 involving MS-13?

23 A. Six years.

24 Q. What was the -- how long did you -- when -- the  
25 first case you worked on that involved MS-13, what was



1 your -- what were your responsibilities?

2 A. I was to sit and listen on a wire tap.

3 Q. How long did that wire tap go for?

4 A. Um, I believe three to four months.

5 Q. And just to be clear, that wire tap wasn't  
6 related to this current case, right?

7 A. It was not.

8 Q. And during those three to four months working on  
9 that wire type, how many hours a week were you working  
10 on it?

11 A. Forty hours a week.

12 Q. And what were you doing 40 hours a week?

13 A. I would sit and listen as the calls came in and I  
14 would translate.

15 Q. When you say "translate," what would you do?

16 A. I would write a summary of the conversation that  
17 was spoken.

18 Q. What languages would you write your summary in?

19 A. In English.

20 Q. In your experience, when -- with translating  
21 Spanish, and Spanish from people from different  
22 countries, do Spanish speakers from different countries  
23 speak different dialects?

24 A. Yes, they do.

25 Q. Can you tell the jury just a little bit more

1 about that?

2 A. So, people from different countries obviously  
3 have different ways of speaking. I would say one word  
4 in Mexico that might mean something different in Cuba or  
5 in Costa Rica or in Argentina. So, yeah, we all have a  
6 little bit of a different dialect.

7 Q. And in your experience at the FBI in particular,  
8 what percentage of the cases you've been assigned to  
9 have involved Spanish speakers from Central America?

10 A. About 80 percent.

11 Q. And, more specifically, what percentage involves  
12 Spanish speakers from El Salvador?

13 A. It's very high, also, maybe 80 percent as well.

14 Q. Now, you said that you have experience with  
15 MS-13 cases; is that right?

16 A. That's correct.

17 Q. In your experience, do members and associates of  
18 MS-13 speak in any particular kind of dialect?

19 A. Yes, they do.

20 Q. Could you tell the jury about that?

21 A. They have their own way of talking. Sometimes  
22 they transpose the letters so that it's not clearly  
23 understood. Sometimes they transpose the sentences.  
24 That would be an example of that.

25 Q. Over the six years that you've been working at

1 the FBI, could you estimate how many hours you've spent  
2 listening to recordings of members and associates of  
3 MS-13 speaking in the dialect that you described?

4 A. Over 3,000 hours.

5 MS. MARTINEZ: Your Honor, at this time I  
6 move the Court to recognize Ms. Portwine as an expert  
7 Spanish language linguist, with expertise particularly  
8 in El Salvadoran and MS-13 dialects of Spanish.

9 MR. LEIVA: Subject to cross-examination.

10 THE COURT: Subject to cross-examination.

11 Go ahead.

12 BY MS. MARTINEZ:

13 Q. Ms. Portwine, as part of this case, were you  
14 asked to translate some Spanish language recordings and  
15 prepare verbatim English translations of those  
16 recordings?

17 A. Yes, I was.

18 Q. What process do you use when you are listening to  
19 a Spanish language recording and preparing a verbatim  
20 English transcript?

21 A. There are several steps, but my -- the way I do  
22 things is, the very first thing that I do is to listen  
23 to the whole recording. And as I'm listening, I'm  
24 taking a few notes in my head.

25 Then after that, then I go ahead and I begin

1 listening for a couple of minutes and then I start  
2 typing. So, then, that's the second step.

3 And then after I finish typing the whole thing,  
4 going back and forth until I understand everything that  
5 was said.

6 Then after that, then I just read it without any  
7 audio.

8 And then after that, then I listen and read at  
9 the same time.

10 And after I listen and read, then I wait a -- a  
11 day or two, and then I listen and read again, and then I  
12 turn it in to my supervisor.

13 Q. Let's go through that just a little bit more.

14 A. Okay.

15 Q. When you're going through that process, where are  
16 you?

17 A. I am at my office, at my desk.

18 Q. And what equipment do you use to listen to the  
19 recordings while you're preparing the translation?

20 A. Well, we have a computer software called  
21 Universal Start-Stop.

22 Q. What is Universal Start-Stop?

23 A. That is just a software program that allows me to  
24 bring the recordings, and I'm able to use a foot pedal  
25 so that I can listen and type without having to stop and

1 use my hand to use the clicker and stuff. So I'm using  
2 a foot pedal.

3 Q. What does the food pedal do? Or what can you do  
4 with the foot pedal?

5 A. The foot pedal only allows me to go forward,  
6 backward, slow it down, start-up, and -- yeah. Forward  
7 and backwards, and it allows me to slow it down, too, to  
8 slow or fast, whichever way.

9 Q. Does the software make any changes to the  
10 recordings?

11 A. Not at all.

12 Q. Does it alter the data on the recording?

13 A. Not at all.

14 Q. Other than Start-Stop, is there any other  
15 equipment that you use listening to the recordings?

16 A. I use headphones.

17 Q. What kind of headphones?

18 A. Bose.

19 Q. Are they noise cancelling headphones?

20 A. Yes.

21 Q. Why do you use those?

22 A. I like to make sure that I am focusing on the  
23 recording and not anything else.

24 Q. Perhaps an obvious question, but do your  
25 headphones make any alteration to the recordings in any

1 way?

2 A. No, not at all.

3 Q. All right. Now, you said that you use Start-Stop  
4 so that your hands are free; is that right?

5 A. That's correct.

6 Q. What are you doing with your hands while  
7 listening to the recording?

8 A. I'm usually type.

9 Q. And what are you typing?

10 A. On the translation. Yeah, I'm translating  
11 whatever I'm listening, too.

12 Q. Skipping ahead a little bit in the process that  
13 you already described, you said that once you've  
14 prepared the full translation, you turn it in.

15 A. That's correct.

16 Q. What is the purpose of turning it in?

17 A. That would be so that my supervisor will send it  
18 out to have it reviewed, to -- to have what I have  
19 written, to have everything reviewed by somebody else.

20 Q. And, do you ever have occasion to be the person  
21 who is reviewing a translation prepared by another  
22 linguist?

23 A. Yes.

24 Q. So let's talk about the review process from your  
25 perspective when you're the reviewer. If you obtained a

1 translation from another linguist, what process do you  
2 undergo to review it?

3 A. Um, again, I start with, I listen to the whole  
4 tape and make a few notes here and there. And in the  
5 case of a review, I also go ahead and read it without  
6 the audio, because I got to check for grammar and things  
7 like that as well. So that's why I like to read it.

8 And then I listen and read. And as I'm  
9 listening, if I need -- if I suggest any changes, then I  
10 use -- I track the changes.

11 Q. What kind of changes might you suggest?

12 A. Again, grammar would be a -- or maybe a  
13 mistranslation, maybe a word, use a different word,  
14 maybe there's a better meaning or anything -- anything  
15 that will improve the translation.

16 Q. Once you're done with your review, what do you do  
17 with that transcript that you've reviewed?

18 A. Then I send it back to my supervisor so they can  
19 send it to the original linguist.

20 Q. Okay. So, let's go back to the times when you're  
21 the original linguist.

22 A. Okay.

23 Q. After you've submitted it to your supervisor for  
24 review --

25 A. Uh-huh.

1 Q. -- at some point do you get the transcript back?

2 A. That's correct.

3 Q. And what do you do then?

4 A. Okay. So as soon as I get my transcript, my  
5 translation, I read it and I read all the changes. I  
6 want to make -- I want to check for grammar, if there  
7 was any suggestion on that. I want to change -- I want  
8 to see what was -- what was suggested.

9 And then, and then after that, then I listen to  
10 it and make the appropriate changes, if I agree with  
11 them.

12 Q. Are you the final decider, when you're the  
13 linguist, about what the translation says?

14 A. Yes, I am.

15 Q. Now, you described this long process that you  
16 take to translate a recording, and you've described a  
17 lot of steps. But from beginning to end, how many  
18 times, on average, do you listen to a Spanish language  
19 recording before your English translation is finalized?

20 A. About eight or nine.

21 Q. And, so just to give the jury a sense of time  
22 that it takes you to do this, if we were talking about,  
23 let's say, a 20-minute recording in Spanish, how  
24 many minutes or hours would it take you from the  
25 beginning of your product to the very end, to prepare



1 that final English translation?

2 A. It would take a long time. It's about a minute  
3 and -- an hour per minute with the whole process and  
4 everything, so...

5 Q. So, in other words, an hour of your time for a  
6 minute of recording?

7 A. Correct.

8 Q. And, how many recordings did you listen to,  
9 approximately, in this case?

10 A. Um, approximately 42 for this case.

11 Q. For the verbatim, right?

12 A. For the verbatim, correct.

13 Q. Did you also listen to recordings where you  
14 performed other work other than preparing verbatim  
15 translations?

16 A. Yes.

17 Q. What else did you do in this case?

18 A. Well, I was doing the summaries, listening to the  
19 wire tap and -- for those summaries.

20 Q. So overall, for the whole course of the  
21 investigation, about how many recordings did you listen  
22 to?

23 A. Over 10,000.

24 MS. MARTINEZ: With the help of the court  
25 security officer, Your Honor, I would like to show this

1 witness what have been marked for identification  
2 purposes as Exhibits 2-A and 2-A-1.

3 Big binder. Sorry about that. Feel free to  
4 take them out of the binder, out of the sleeves, if you  
5 need to. Okay?

6 THE WITNESS: Okay.

7 BY MS. MARTINEZ:

8 Q. Let's start with 2-A.

9 A. 2-A, yes.

10 Q. It should be a disk?

11 A. It is a disk.

12 Q. Do you recognize that disk?

13 A. I do.

14 Q. You do. How do you recognize that disk?

15 A. It has my signature on it.

16 Q. And when did you put your signature on it?

17 A. Um, right before I --

18 Q. Let me ask it this way: As part of your trial  
19 preparation, were you asked to come and listen to some  
20 disks and compare them to some translations?

21 A. Yes.

22 Q. And those translations, who prepared the  
23 translations that you reviewed while you reviewed the  
24 disks?

25 A. I did.

1 Q. So, if you could go back and look at 2-A, is 2-A  
2 one of the disks that you listened to in preparation for  
3 your trial testimony?

4 A. Yes, it is.

5 Q. And, how do you know that that particular disk is  
6 one of the ones that you listened to?

7 A. It has my signature on it.

8 Q. Now, if you could look at Exhibit 2-A-1.

9 A. Uh-huh.

10 Q. What is 2-A-1?

11 A. 2-A-1 is the translation of the recording.

12 Q. Which recording?

13 A. 2-A.

14 Q. And is that a translation that you prepared?

15 A. Yes, it is.

16 Q. Using the process that you already described  
17 here?

18 A. Correct.

19 Q. All right. Now, within 2-A-1, there are some --  
20 within the transcript there are people identified. The  
21 speakers of the -- the people are identified; is that  
22 right?

23 A. Correct.

24 Q. All right.

25 A. Yes.

1 Q. Is it your responsibility, as the linguist, to  
2 identify the names of the people who are speaking in the  
3 translation?

4 A. No, it's not.

5 Q. When you prepare your translation, if you don't  
6 know who's speaking, how do you indicate that?

7 A. I put "unknown male," "UM."

8 Q. And did you do that in this case?

9 A. Sometimes I did, yes.

10 Q. And, in these final versions of the translations  
11 that you reviewed in your trial preparation, are many of  
12 the names identified?

13 A. Um --

14 Q. Many of the speakers?

15 A. Many of the speakers are identified.

16 Q. And just to be clear, those identifications don't  
17 come from you; is that right?

18 A. Correct.

19 Q. With the exception of the identities of the  
20 speakers, are the trans- -- is the translation in 2-A-1  
21 entirely your work product?

22 A. Yes, it is.

23 Q. And based on your experience and your knowledge  
24 as a Spanish language linguist, is the translation in  
25 Exhibit 2-A-1 a true and accurate English translation of

1 the Spanish language recording in 2-A, to the best of  
2 your abilities as a Spanish language linguist?

3 A. Yes, it is.

4 MS. MARTINEZ: Your Honor, at this time we  
5 would move -- conditionally move 2-A and 2-A-1 into  
6 evidence, conditional on establishing the relevance, of  
7 course, of the recording and the translation.

8 THE COURT: All right. And subject to  
9 cross-examination on her expertise. All right, 2-A and  
10 2-A-1 will be received conditionally.

11 BY MS. MARTINEZ:

12 Q. Now I would like you to look -- it should be in  
13 that same binder there -- at Exhibit 2-B and 2-B-1.

14 A. I see it.

15 Q. Do you see 2-B and 2-B-1?

16 A. Yes.

17 Q. All right. Starting with 2-B, what is 2-B?

18 A. 2-B is a recording of a translation --

19 Q. And -- I didn't mean to interrupt. Go ahead.

20 A. 2-B is a part of a recording of a translation.

21 Q. What you do mean by, it's part of a recording?

22 A. It's only part of it. It's not the whole  
23 recording.

24 Q. Which one is the whole recording?

25 A. 2-A.

1 Q. So, 2-B is a clip of 2-A?

2 A. Correct.

3 Q. All right. And that disk there that you're  
4 looking at, have you reviewed that particular disk?

5 A. I did review it.

6 Q. And how do you know -- how do you know that you  
7 reviewed it?

8 A. Because it has my signature.

9 Q. How about 2-B-1; what is Government's  
10 Exhibit 2-B-1?

11 A. 2-B-1 would be the translation of the clip of the  
12 recording.

13 Q. So, it's the translation of the smaller portion;  
14 is that right?

15 A. That's correct.

16 Q. Did you review that translation or that portion  
17 of the translation while you were also reviewed the clip  
18 in 2-B?

19 A. I did.

20 Q. And does the translation match the clip, the  
21 Spanish language clip?

22 A. It does.

23 Q. And is that a portion of a transcript that you  
24 actually prepared?

25 A. Correct.

1 Q. And is 2-B-1 a true and accurate translation of  
2 2-B, to the best of your abilities as a Spanish language  
3 linguist?

4 A. Correct.

5 MS. MARTINEZ: Your Honor, we would  
6 conditionally move to admit 2-B and 2-B-1, subject to  
7 relevance.

8 THE COURT: And cross-examination.

9 MS. MARTINEZ: And cross-examination.

10 THE COURT: 2-B and 2-B-1 will be received.

11 BY MS. MARTINEZ:

12 Q. Let's look now, if you will, at Government's  
13 Exhibits 3-A and 3-A-1. Do you see that?

14 A. I see it.

15 Q. All right. Start with 3-A.

16 A. Uh-huh.

17 Q. What is 3-A?

18 A. 3-A is a recording that I reviewed.

19 Q. Is --

20 A. It's a -- it's a recording in Spanish that I  
21 reviewed already.

22 Q. Did you review it as part of your trial  
23 preparation?

24 A. Yes, I did.

25 Q. Had you also reviewed it earlier as part of your

1 duties in this case?

2 A. Yes.

3 Q. What is 3-A-1?

4 A. 3-A-1 is the translation of the recording, 3-A.

5 Q. All right. And just in case I didn't ask you,  
6 how do you know that Government's Exhibit 3-A is the  
7 same recording that you previously reviewed?

8 A. Um, because it has my signature.

9 Q. Who prepared the translation in 3-A-1?

10 A. I did.

11 Q. And, did you review the translation while  
12 listening to the recording in 3-A?

13 A. I did.

14 Q. And, once again, are -- are there names  
15 identified in the translation?

16 A. Yes, there are.

17 Q. Were you responsible for identifying those names?

18 A. No, I was not.

19 Q. With the exception of the names, the identities  
20 of the speakers, is all of the translation in 3-A-1 your  
21 work product?

22 A. Yes, it is.

23 Q. And, is Government's Exhibit 3-A-1, the English  
24 translation, a true and accurate English translation of  
25 the Spanish language recording in Government's



1 Exhibit 3-A, to the best of your abilities as a Spanish  
2 language linguist?

3 A. Yes, it is.

4 MS. MARTINEZ: Your Honor, again subject to  
5 relevance and cross-examination, we conditionally move  
6 to admit Government's Exhibit 3-A and 3-A-1.

7 THE COURT: Admitted conditionally, subject  
8 to cross-examination and qualification.

9 MS. MARTINEZ: And, Your Honor, just for the  
10 record, Government's Exhibit 3-A, the recording, has  
11 already been admitted into evidence through a previous  
12 witness.

13 THE COURT: Okay.

14 BY MS. MARTINEZ:

15 Q. Could you look now at Government's Exhibits  
16 3-B --

17 A. I see it.

18 Q. -- and 3-B-1?

19 A. I see it as well.

20 Q. What is Government's Exhibit 3-B?

21 A. 3-B is a clip, a portion of a -- of a --  
22 previously -- of a previous translation -- of a previous  
23 recording.

24 Q. Can you identify which recording it is a clip of?

25 A. Yes. 3-A.

1 Q. How do you know that 3-B is a clip of 3-A?

2 A. That is because I reviewed it. I reviewed it  
3 along with 3-B-1, and it has my signature.

4 Q. And what is 3-B-1?

5 A. 3-B-1 is a clip or a part, a portion of a  
6 translation.

7 Q. And, does the portion of the translation in 3-B-1  
8 match the audio recording in 3-B?

9 A. Yes, it does.

10 Q. How do you know that?

11 A. It has my signature.

12 Q. And is 3-B-1 a portion of 3-A-1?

13 A. Yes, it is.

14 Q. And who prepared that translation?

15 A. I did.

16 Q. So, is 3-B-1 a true and accurate English  
17 translation of the Spanish language recording clip in  
18 3-B, to the best of your abilities as a Spanish language  
19 monitor?

20 A. Yes, it is.

21 Q. Let's look at 3-C and 3-C-1.

22 What is 3-C?

23 A. 3-C is also a portion of a translation for 3-A.  
24 This is the recording, the CD, with my signature on it.  
25 And 3-C-1 is the translation.

1 Q. And is 3-C-1 a portion of a translation?

2 A. Yes, it is.

3 Q. What is it a portion of?

4 A. Of the translation for 3-A-1.

5 Q. Thank you.

6 And, did you review Government's Exhibit 3-C?

7 A. Yes, I did.

8 Q. How do you know?

9 A. It has my signature on it.

10 Q. Is Government's Exhibit 3-C-1, the English  
11 language translation, a true and accurate English  
12 translation of Government's Exhibit 3-C, to the best of  
13 your abilities as a Spanish language linguist?

14 A. Yes, it is.

15 MS. MARTINEZ: Your Honor, again subject to  
16 relevance and cross-examination, we conditionally move  
17 to admit Government's Exhibits 3-C and 3-C-1.

18 THE COURT: 3-C, 3-C-1 conditionally  
19 admitted.

20 BY MS. MARTINEZ:

21 Q. Ms. Portwine, we have a few more to go through  
22 and in an attempt to go a little bit faster, I'm going  
23 to try to do several at once.

24 A. Okay.

25 Q. You just let me know if it gets too confusing and

1 we will stop and go one by one.

2 A. Okay.

3 Q. Okay?

4 Can you go ahead and look at Government's  
5 Exhibits 7-A and 7-A-1, 10-A and 10-A-1, 11-A, 11-A-1,  
6 14-A, 14-A-1, 15-A, 15-A-1, 16-A, 16-A-1, 17-A, 17-A-1,  
7 and 20-A and 20-A-1.

8 Let's start with all of those A's. Do you  
9 recognize those exhibits?

10 A. I do.

11 Q. What are they?

12 A. The recordings.

13 Q. Are they recordings that you've reviewed?

14 A. They are recordings I have reviewed, yes.

15 Q. How do you know that those disks are recordings  
16 that you reviewed?

17 A. All of them have my signature.

18 Q. And let's go through the A-1s. All of those A-1s  
19 that you just looked at, what are they?

20 A. They are translations of the recordings.

21 Q. Who prepared those translations?

22 A. I did.

23 Q. And, did you also review the disks, the A's, and  
24 compare them to the translations, the A-1s?

25 A. I did.

1 Q. And which translation goes with which disk?

2 A. Um, so, translations for recording 4-A goes with  
3 4-A-1.

4 Q. Okay. So if we were to go to -- I think we  
5 started with 7-A and 7-A-1.

6 A. Correct.

7 Q. Do those two match?

8 A. Yes.

9 Q. And, do you know because you reviewed them?

10 A. Correct.

11 Q. All right. Moving on to 10-A and 10-A-1, what's  
12 the relationship between those exhibits?

13 A. 10-A is the recording, the CD, the recording, and  
14 10-A-1 is the translation.

15 Q. 11-A, 11-A-1?

16 A. 11-A is the recording. 11-A-1 is the  
17 translation.

18 Q. 14-A, 14-A-1?

19 A. 14-A is the recording. 14-A-1 is the  
20 translation.

21 Q. And just to be clear for the record, when you're  
22 saying "the translation," do you mean the translation of  
23 that disk?

24 A. Correct.

25 Q. 15-A, 15-A-1?

1           A. 15-A is the recording and 15-A-1 is the  
2 translation of the recording.

3 | Q. 16-A, 16-A-1?

4           A. 16-A is the recording. 16-A-1 is the translation  
5 of the recording.

6 | Q. 17-A, 17-A-1?

7           A. 17-A is the recording. 17-A-1 is the translation  
8 of the recording.

9 Q. And 20-A and 20-A-1?

10           A. 20-A is the recording. 20-A-1 is the translation  
11 of the recording.

Q. And for all of these recordings and translations  
that you prepared, are the translations true and  
accurate English translations of the Spanish language  
recordings to the best of your ability as a Spanish  
language linguist?

17 | A. Yes, they are.

18 MS. MARTINEZ: Your Honor, subject to  
19 relevance and cross-examination, the government moves to  
20 admit Government's Exhibits 7-A, 7-A-1, 10-A, 10-A-1,  
21 11-A --

22 THE COURT: Ms. --

23 MS. MARTINEZ: -- 11-A-1 --

24 THE COURT: -- Martinez, Ms. Martinez.

25 MS. MARTINEZ: I'm so sorry, Your Honor.

1 THE COURT: No, it's just that I can't write  
2 as fast as you can speak, and I want to make sure I get  
3 it right. Okay. Start over.

4 MS. MARTINEZ: Absolutely, Your Honor.

5 THE COURT: Take your time. Hold on.

6 MS. MARTINEZ: I'll begin with 7-A, 7-A-1.

7 THE COURT: Okay.

8 MS. MARTINEZ: 10-A, 10-A-1, 11-A, 11-A-1,  
9 14-A, 14-A-1, 15-A, 15-A 1, 16-A, 16-A 1, 17-A, 17-A 1,  
10 20-A, and 20-A-1.

11 THE COURT: Received.

12 MS. MARTINEZ: Thank you, Your Honor.

13  
14 BY MS. MARTINEZ:

15 Q. And Ms. Portwine, if you could indulge me,  
16 because we went through a lot of numbers and a lot of  
17 exhibits and I just want to make sure we got them all.  
18 Could you flip back to Government's Exhibits 3-B and  
19 3-B-1.

20 MS. MARTINEZ: Court's indulgence for just a  
21 moment, Your Honor.

22 THE COURT: Sure. All right.

23 (Pause.)

24 BY MS. MARTINEZ:

25 Q. All right. And so, Government's Exhibit 3-B,

1 what is that?

2 A. That is a part of a recording -- it's a  
3 recording, but it's only a clip. It's only a part of  
4 another recording.

5 Q. Okay. And, is -- what recording is it a part of?

6 A. It would be 3-A.

7 Q. So, another clip like we've talked about before?

8 A. Yes, correct.

9 Q. How about 3-B-1?

10 A. 3-B-1 is again, a part, a portion of translation.  
11 The translation would be 3 -- 3-1 -- 3-A-1.

12 Q. And is 3-B-1 a true and accurate English  
13 translation of Government's Exhibit 3-B, to the best of  
14 your abilities as a Spanish language linguist?

15 A. Yes, it is.

16 Q. All right. And indulge me, just in case I  
17 skipped this one, can you look at Government's  
18 Exhibits 5-A and 5-A-1.

19 Government's Exhibit 5-A, is that a disk that  
20 you've reviewed before?

21 A. Um, can I take it out?

22 Q. Of course.

23 A. Yes, it is.

24 Q. How do you know?

25 A. It has my signature on it.



1 Q. You couldn't see it until you took it out?

2 A. I couldn't see it until I take it out.

3 Q. How about 5-A -- excuse me -- 5-A-1; what is  
4 5-A-1?

5 A. 5-A-1 is the translation of the recording, 5-A.

6 Q. Is that -- who prepared that translation?

7 A. I did.

8 Q. And, once again, just for the record, in all of  
9 these translations, were you responsible for identifying  
10 the names of the speakers?

11 A. No, I wasn't.

12 Q. And do all of these translations have  
13 identities -- have names of speakers in the  
14 translations?

15 A. Yes, they do.

16 Q. With the exceptions of the identities of the  
17 speakers, are they all your work product?

18 A. Yes, they are.

19 Q. And is Government's Exhibit 5-A-1 a true and  
20 accurate English translation of Government's  
21 Exhibit 5-A, to the best of your abilities as a Spanish  
22 language linguist?

23 A. Yes, it is.

24 MS. MARTINEZ: Your Honor, again  
25 conditionally, the government would also move to admit

1 Government's Exhibits 3-B and 3-B-1 and 5-A and 5-A-1.

2 THE COURT: Received.

3 MS. MARTINEZ: No further questions, Your  
4 Honor.

5 MR. JENKINS: Your Honor, would now be an  
6 appropriate time to stop for the day?

7 THE COURT: Mr. Jenkins, I think it would be  
8 an appropriate time to stop, because we don't have a  
9 short witness. And I don't mean short in stature.

10 (Laughter.)

11 MR. JENKINS: Thank you, your Honor. I  
12 appreciate that.

13 THE COURT: Ladies and gentlemen, again, we  
14 appreciate your attention as responsibility as jurors.

15 I want to remind you of the instruction I  
16 give every day, and that is not to discuss the case, not  
17 to permit the case to be discussed in your presence.  
18 Don't do any research on the case.

19 Leave your notes in the jury deliberation  
20 room.

21 Don't visit any places that you've heard  
22 discussed in trial.

23 We will resume on Monday, 10:00 a.m. You're  
24 free to leave now. Thank you very much. You can go.  
25 And leave your notes in the jury deliberation room.

1 Thank you.

2 (Jury not present.)

3 THE COURT: Anything else I need to take up  
4 before we leave for the day?

5 (No response.)

6 THE COURT: Okay. Good. We're in recess.

7 Thank you.

8 (Court recessed at 4:58 p.m.)

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1  
2 CERTIFICATE OF REPORTER  
3

4 I, Renecia Wilson, an official court  
5 reporter for the United States District Court of  
6 Virginia, Alexandria Division, do hereby certify that I  
7 reported by machine shorthand, in my official capacity,  
8 the proceedings had upon the jury trial in the case of  
9 UNITED STATES OF AMERICA v. PEDRO ANTHONY ROMERO CRUZ,  
10 et al.,

11 I further certify that I was authorized and  
12 did report by stenotype the proceedings in said jury  
13 trial, and that the foregoing pages, numbered 1 to 268,  
14 inclusive, constitute the official transcript of said  
15 proceedings as taken from my shorthand notes.

16  
17 IN WITNESS WHEREOF, I have hereto  
18 subscribed my name this 2nd day of May, 2016.

19  
20 /s/

21 Renecia Wilson, RMR, CRR  
22 Official Court Reporter  
23  
24  
25